

THE INDIAN FEDERATION

*Being the thesis approved for the Ph.D. degree
of the University in Political Science.*

COMPUTERISED

BY

BRIJ MOHAN SHARMA, M.A., Ph.D.

Author of 'Federal Polity', Joint author (with Dr. Ram) of 'India and the League of Nations', author of 'History of England', 'History of India' etc. etc., Honorary Joint Secretary Lucknow Branch of the League of Nations Union.

WITH A FOREWORD BY

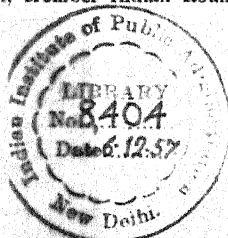
Mr. C.Y. CHINTAMANI, M.L.C.

Chief Editor "The Leader", Allahabad, Sometime Education Minister in the U.P. Government, Member Indian Round Table Conference.

IIPA LIBRARY



8404



LUCKNOW.

THE UPPER INDIA PUBLISHING HOUSE Ltd.
LITERATURE PALACE.

1932

Lucknow University Studies in Political Science.

UNDER THE EDITORSHIP OF

Dr. V. Shiva Ram, M.A., Ph. D.

1. The Indian Federation.—By Dr. Brij Mohan Sharma, M.A., Ph.D.

Rs. 10 or 16 s.

2. Political Theory and Modern Governments.—By Dr. V. Shiva Ram, M.A., Ph.D., Dr. Eddy Asirvatham, B.A., Ph.D., and Dr. Brij Mohan Sharma, M.A., Ph.D.

(Ready in January 1933).

3. The Governments of Asia.—By Dr. V. Shiva Ram, and Dr. Brij Mohan Sharma. (Ready in March 1933.)

Other volumes in preparation.

INTRODUCTION

"The Indian Federation" is the first of the series in the Lucknow University Studies in Political Science, being the thesis for the doctorate of Mr. Sharma. The work is not only timely but would be found to be decidedly the most useful to students of the Indian constitution. The author's conclusions on the problems of Federal Governments in general and their application to India in particular ought to be very helpful in framing the new constitution for India. It is hoped that this first book in the series will make a valuable contribution to the practical solution of the many constitutional problems of India.

The University,
LUCKNOW :
September 12, 1932.

V. SHIVA RAM

TO MY PARENTS

PREFACE

Few people realise the difficulties that lie in the path of the statesmen of England and public men of India in devising a workable constitution for this country. These difficulties are further aggravated when the constitution proposed is to be on federal lines. The geographical vastness of the country, the variety of languages and religions of the people inhabiting the various provinces, and the roping in of the Indian States, in area varying from a few square miles to the size of European countries like France and Germany, with constitutions, defined or undefined, between partial democracy and undiluted autocracy, will baffle any body of statesmen, however competent and earnest, the more so when they discover that such a gigantic problem has been tackled never before at any period in recorded history. In order, therefore, that the solution proposed may be the best in the existing circumstances, it is necessary that all opinions, views and arguments are heard, discussed and properly weighed before parliamentary legislation is actually undertaken. This is the only apology that I can put forward for the appearance of this book at this time.

I began the writing of these pages early in 1928 and the work was finished and submitted for adjudication by the examiners in April 1930, that is, before the Indian Statutory Commission, presided over by Sir John Simon, had submitted its Report to the British Parliament, and, of course, much before the details of the federal constitution were hammered out in the two sessions of the Indian Round Table Conference in London. But the publication of this work had to be deferred to this date for various reasons. During this interval I had ample opportunity to study the vast literature that has since grown round this subject and I have considered it useful to include in my discussion an examination of the various views, official and non-official, expressed during this time on the subject. Let me, how-

ever, state frankly that although I did not feel inclined to change any of the views I had formed in 1930, the later discussions have surely helped me in emphasizing some of the conclusions I have embodied in the last two chapters of the book.

Here I wish to touch upon a few points which, in my opinion, require some explanation.

Regarding the nature of responsibility of the federal executive, I have supported the system in vogue in the Czechoslovakian Republic, with certain modifications. I may make it clear that this holds good only for driving out the executive at any time between one budget session and another. That is to say, at the time of the presentation of the budget the cabinet should resign even if a bare majority votes down any important item. All this, I assert, is necessary to give every cabinet a chance to work, after its budget has been passed, for at least one year. Too many changes in the cabinet, even between one budget session and another, will only make our constitution an unstable one.

In the assignment of powers between the federation and the federating units, I have not taken into account A,B,C and D groups as framed by the Federal Structure Committee of the Round Table Conference, for I have laid down my plan for the final shape of the Indian federation, without discussing the intermediate stages. The same holds good with regard to the solution of the communal problem as indicated in the last two chapters. I have taken the nationalistic view, which is undoubtedly the only sane view. I strongly feel that a partition of India on communal or religious lines is fraught with serious danger to the country. Whatever arrangements about communal representation may be arrived at between the various communities, for the transition period, I am sure the ultimate solution shall have to be made on purely nationalistic basis.

I do not claim that in these pages I have exhausted the subject which is indeed as vast and as deep as the ocean. Nor do I claim that the solution I have offered is flawless. I have attempted my task as an academician, and, may be, my solution, like the recent communal decision

by the British Government, meets with the approval of a few and be rejected, if not actually condemned, by many, in these days when each class is trying to gain at the expense of the other. But it is my conviction that the final solution of India's constitutional problem shall have to be made along lines similar to, if not wholly identical with, those I have indicated in the following pages.

I am not vain enough to say that these pages will prove of any immediate use to those statesmen and politicians who are at present engaged in preparing the federal constitution for a united India. I have dared to publish my thesis only in the hope that to-day when our future constitution is on the anvil, perhaps it will stimulate thought on the subject on the part of the layman and the average politician who must, in the nature of things, devote some attention to this vast problem. If it does that I will be satisfied.

I have already indicated the complex nature of the constitutional problem of India. I frankly admit that I did not fully realise the difficulties of my task when I first undertook to work on this subject. The paucity of proper literature added to my difficulties. I had to pass restless days and nights in studying the various aspects of the problem. The ungrudging advice and help of Dr. V. Shiva Ram, M. A., Ph. D., my esteemed tutor and Head of the Department of Political Science in the Lucknow University was, however, at my disposal, and I cannot be too thankful to him for what I have been able to achieve in this thesis. I must mention with gratitude the names of Sir Tej Bahadur Sapru, one of the few constitutionalists India is proud of to day, and Prof. Harold J. Laski of the London School of Economics, who kindly examined my thesis and made some very valuable suggestions. The former very kindly gave me some valuable hours to discuss several aspects of the problem with him and allowed me the use of some important books in his library. My thanks are also due to Mr. V. K. Nandan Menon, B. A. (Oxon.), and Dr. Eddy Asirvatham, B. A., Ph. D., both lecturers in the Department of Political Science in the Lucknow University, who very kindly helped me with useful suggestions from time to time. I am indebted to

Mr. M. B. L. Bhargava, B. A., an author and publicist, for his kindly helping me in going through the proofs, a very trying job. The proprietor of the Shukla Printing Press printed these pages with expedition and care for which I am much obliged to him.

Lastly, I have no proper words to express my obligation to Mr. C. Y. Chintamani, Chief Editor 'The Leader', Allahabad, who kindly found time, I am sure with great difficulty as his engagements are as multifarious as they are important, to go through the proofs, and contribute a Foreword which I much appreciate.

LUCKNOW.

September 12, 1932.

}

B. M. SHARMA

FOREWORD

This book reflects great credit on its young author and his teachers in Lucknow University, foremost among them Dr. V. S. Ram. A brilliant product of that University, Dr. Brij Mohan Sharma has chosen for his thesis a subject of great present importance in this country and treated it with knowledge and ability. It is evident that Dr. Sharma has read widely and, what is more important if less common, read with advantage to himself as well as to the community. The student of Indian politics will find in the following pages plenty of useful information on theory and practice as well as on the problem as it presents itself in India. Wisely, if I may say so, Dr. Sharma neither accepts nor rejects bodily any theory or any constitutional expedient but examines its applicability to Indian conditions with or without modification and reaches conclusions with a practical mind. It is not likely that all of them will be accepted by every one—when are any so accepted?—and it is probable enough that on some points the author's judgment may have to be revised. The subject is of such nature and such complexity that more experienced men have found themselves under a similar necessity. Dr. Sharma's avoidance of dogmatisation is therefore the more to be commended.

At least some of the essential conditions of a complete and satisfactory federation are lacking in India owing to the peculiar position of the Indian States aggravated by the unwillingness of their rulers to give up any part of their rights for the greater good of the whole. Personally, I am not enamoured of many of the limitations of the scheme of federation that has been evolved—so far as it has gone—and am not free from doubt if it was wise to force the pace as was done when the first session of the Round Table Conference assembled in London. Nor am I alone in this attitude of mind. Indeed, I have heard it said "Federate in haste, repent at leisure". The British Government, however, found the idea of federation serviceable. They were not ready with an affirmative answer to India's national

demand for Self-Government such as obtains in the Dominions (with the minimum of reservations during a transitional period fixed by statute), but would have found it inexpedient to say a direct No. Hence they clutched at Federation comprehending both States and provinces, rendered more secure (from their point of view) by the so-called reservations and safeguards and declared, "Yes, responsible government, have it, but provided the States too are in it". And the States are not yet definite whether they will be in or out, so far as the resolutions of their Chamber and its Standing Committee enable one to see. One thing, however, is clear. If they will come in, they will do so incompletely, reserving highly important matters for treatment between them and the British Crown (i. e., the British Government) and other important subjects for disposal by themselves independently of the federal government. While to the extent they may come in, they will do so, as one can judge from the reports of the Federal Finance and States Inquiry Committees, on terms financially onerous to British India, but at the same time with an amount of representation in the federal legislature in excess of what is due to the States. Out of consideration to their uncompromising opposition, certain subjects which should be federal will very likely not be such, while the method of representation in the federal legislature will vary as between States and provinces, to the disadvantage of the people of the former. And perhaps, there will not even be a federal citizenship because the princes object to it in so far as it may affect their own (autocratic) rights over their subjects. On the of top all this will be the proposed reservations and safeguards which will deprive the future constitution of still more of the value that should attach to it.

Neither will provincial *autonomy* be provincial autonomy that may be strictly so called owing to reservations of which the readers have doubtless read much.

I am interested by Dr. Sharma's treatment of the subject of a Second Chamber of the federal legislature. In the light of his view of the comparative inutility of a second chamber even in the centre, what he thinks of similar impediments in the provinces as well may be inferred with-

prescription will not be happy without them, and they are supported and encouraged by the authority now in possession for reasons which it should be superfluous to state. What deduction should be made from the value of the provincial *autonomy* that has been so much boomed on account of the second chamber obsession of the *haves* who have the power to carry into effect what they want, and (I must add) how much more on account of the Government decision—which it is an error to dignify by the title ‘award’—perpetuating and increasing the evil of the fragmentation of the electorate into class and communal and sex divisions this is not the place for me to enlarge upon.

Before bringing this Foreword to a close I cannot but congratulate the author once more on his admirable effort. It rejoices one’s heart to see that the Indian Universities are producing scholars of the calibre of Dr. Sharma. This is rich with promise for the future.

ALLAHABAD
September 6, 1932. }

C. Y. CHINTAMANI

CONTENTS

PART I

THEORY OF FEDERALISM

CHAPTER	CONTENTS	PAGE
I.	Scope and Method of Federalism.	... 3
	INTRODUCTION.	
	1. <i>Types of Political Unions.</i>	
	2. <i>Federalism Defined.</i>	
	3. <i>Essential Characteristics of a Federal Constitution—</i> The Importance of the Constitution and its rigid written character, Co-existence of Two Governments, Special Position of the Judiciary.	
	4. <i>Federal Tie is Irrevocable.</i>	
II.	Growth of Federalism.	... 30
	INTRODUCTORY.	
	1. <i>Factors that have contributed to the Growth of Federalism—</i>	
	(a) Geographical contiguity of the country.	
	(b) The Problem of Defence.	
	(c) Economic Factors.	
	(d) Political Motives.	
	(e) Racial and Cultural Factors; The Racial Question; The Influence of Language and Literature; The Problem of Religion.	
	(f) Colonial Policy.	
	2. <i>The Nature of a Federal Government.</i>	
III.	Distribution of Powers in a Federation.	... 78
	INTRODUCTORY.	
	1. <i>Division of Powers between Federal and State Governments.</i>	
	(a) Powers of the Federal Government in a Federation.	

- (b) Powers of State Governments.
- (c) The Residuary Powers in a Federation.
- 2. *The Separation of Powers in a Federation.*
 - (a) The Federal Legislature.
 - (b) The Federal Executive.
 - (c) The Federal Judiciary.

PART II

APPLICATION OF FEDERALISM TO INDIA

IV. The Historical Background. ... 123

INTRODUCTORY.

- 1. *Ancient Hindu India.*
- 2. *Muslim India.*
Under the Pathans; Under the Moghals
- 3. *Under the British.*
The Development of Centralisation;
Under the British Crown as a complete Dependency;
Morley-Minto Reforms and Lessons in Self-Rule;
On the Road to Responsible Govt.
(a) Provincial Governments.
(b) The Central Government.

V. The Problem. ... 180

INTRODUCTORY.

- 1. The Physical Basis.
- 2. The Communal Question.
- 3. Redistribution & Status of Provinces.
- 4. The Problem of Languages.
- 5. The Problem of the Indian States.
- 6. The Political Parties and the Form of the Constitution.

VI. Contemporaneous Discussions. ... 209

INTRODUCTORY.

- 1. *The Communal Aspect—*
Hindu-Muslim Problem,
The Sikh Problem,
Other Communities,
The Depressed Classes.

2. *Redistribution and Status of Provinces—*

Discussions on Sind,
Question of Other Provinces,
The Problem of the North-West
Frontier Province and Baluchistan.

3. *The Indian States—*

The Political Aspect, The Fiscal
Aspect,

4. *The Form of the Constitution.—*

Independence versus Dominion Status,
Federal versus Unitary Type.

VII. The Solution. 276

INTRODUCTORY.

1. *The Form of the Constitution.—*

Independence versus Dominion Status,
Federal versus Unitary Constitution ;
The Form of the Indian Federation.

2. *Redistribution and Status of Provinces.—*

General; North-West Frontier Province
and Baluchistan, The Indian States.

3. *The Distribution of Powers.—*

The Powers of the Central Indian
Government.

VIII. The Solution (*continued*). 321

The Federal Legislature.—

Its Form ; Its Composition ;
Its Life and Working.

The Federal Executive.—

Its Form ; Its Composition ;
The Nature of Its Responsibility ;
Its Stability.

The Federal Judiciary.—

The Supreme Court ; Its Powers ;
Its Comparison with other federal
Supreme Courts.

*The Powers of the Provincial Govern-
ments.—*

North-West Frontier Province and
Baluchistan.
The Indian States.

Financial Devolution.

The Finances of the Central Indian
Government; Specific Suggestions;
The Federal Bank; Summary of
Financial Proposals made.

The Finances of the Indian States.

Other Suggestions; Effect of these
Suggestions-The Communal Problem,
Problem of the States, The Problem
of Languages.

Conclusion	...	...	... 380
Bibliography	...	...	... 383
Index	...	...	... 391

LIST OF MAPS, DIAGRAMS AND STATEMENTS

S. NO.	CONTENTS.	FACING PAGE.
1.	Map of India showing Provincial and Linguistic Areas ...	193
2.	Map of India showing British Provinces and the Indian States ...	197
3.	Diagrams showing comparison between British India and the Indian States. ...	198
4.	Map of the Punjab (Communal Divisions). ...	213
5.	Map of Bengal (Communal Divisions)	214
6.	Map of the North-West Frontier Province and British Baluchistan ...	298
7.	Comparative Diagrams of Income and Expenditure of the North-West Frontier Province. ...	303
8.	Graph showing Income and Expenditure for British Baluchistan ...	306

PART ONE

THEORY OF FEDERALISM

"The structure of our social organisation must be federal if it is to be adequate. Its pattern involves, not myself and the State, my groups and the State, but all these and their interrelationships."

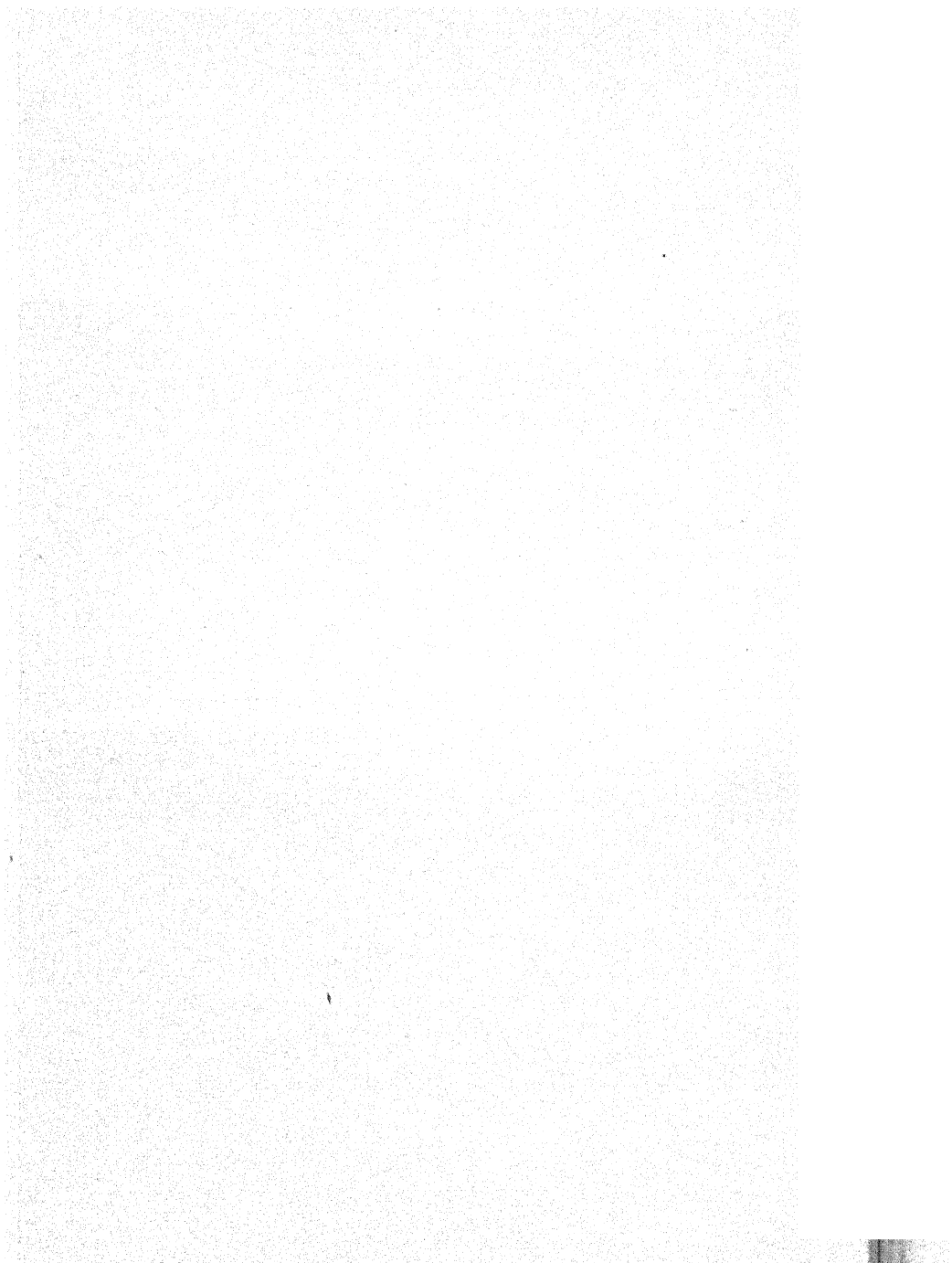
Harold J. Laski

"Where the conditions exist for the formation of efficient and durable federal unions, the multiplication of them is always a benefit to the world."

J. S. Mill

"When we turn our gaze from the past to the future, an extension of federalism seems to me the most probable of the political prophecies relative to the form of government."

Henry Sidgwick



CHAPTER I

FEDERATIONS AND UNIONS

Introductory.

Modern scientific discoveries and the consequential modifications in economic and social relationships have been necessitating larger and larger political combinations. And federalism is the result of an attempt to secure this end, at the same time retaining in the hands of these combining political units as large an amount of freedom as possible. Nor has the movement come to an end. Inside the British Empire the recent federal movement has apparently failed. But in the current discussions regarding the future of the Indian constitution there are many strong advocates of the federal solution. And in the international field the League of Nations can undoubtedly be looked upon as an incipient federation. Whatever may be its actual future, it cannot be denied that an influential body of world opinion to-day looks forward to the development of the League's institutions along federal lines.

But federalism connotes a high degree of political experience for its successful establishment and working. This is one of the reasons why prior to the foundation of the constitution of the United States of America in 1789, such

cases of political combinations as may be called federal were really exceptions, and even these could be called federal only in a rather loose sense of the word. "Though federal governments are ancient—the oldest apparently is that formed by the cities of Lycia in the fourth century B.C.—the ancient federations scarcely got beyond the form of leagues of small republics for the purpose of common military glory."* This statement of Bryce depicts the character of ancient federations.

1. Types of Political Unions.

Political combinations of various groups and communities, on more or less an equal footing, need not always be of the same character or extent. In fact, there are divers types of them, according to differing circumstances. History affords examples of several kinds of these unions. When George I ascended the throne of England in 1714 he retained under him his ancestral possession of Hanover. This was only a personal union which lasted upto 1837 without, in any way, affecting the position of England. During this period England and Hanover had the same person as the head of the state, but the independence of each remained unimpaired and the two states retained their distinct characters in all international dealings. Nor was there any obligation for them to act in concert in their dealings with any foreign powers. In short, the separate existence of the two states as it had been prior to 1714 was not in any wise changed because of their personal union.

*James Bryce, 'Constitutions,' p. 271.

Another kind of union was that of England and Scotland between the years 1603-1707. In the year 1603 King James VI of Scotland became King of England also and by this act he united the two Kingdoms. Both the states retained their own laws and institutions and their internal political systems were not in any way impaired by the union. Only in their external dealings they became one and in all international affairs they appeared as one state under the same Sovereign. This sort of union lasted upto the year 1707 when by the Act of Union* the two states merged their internal sovereignty and for all purposes they became one state. Article III of the Act of Union stipulated "That the United Kingdom of Great Britain be represented by one and the same Parliament to be styled 'The Parliament of Great Britain'." Articles V-IX established uniformity of Excise, Salt duties, and Land Tax. Articles XVI-XVII provided for the same standard of Coinage, and Weights and Measures. There was also provision for keeping one seal for the two erstwhile in use. In order to make the union perfect, Article XXV provided "That all Laws and Statutes in either Kingdom so far as they are contrary and inconsistent with the Terms of these Articles, or any of them, shall, from and after the Union cease and become void and shall be so declared to be by the respective Parliaments of the said Kingdoms". So the two Parliaments, so far sovereign in their respective Kingdoms, themselves resigned their sovereignty into the

* Act For the Union of the two Kingdoms of England and Scotland.

6th. March, 1706-1707, 6 Anne, cap. 11.

hands of a new one established to legislate for the United Kingdom. Thus England and Scotland thenceforward ceased to be regarded as two distinct Kingdoms even in their internal administrations. This was a case of real union and the result was the voluntary establishment of a unitary state.

A third type of union between two or more states usually grows out of a temporary alliance, concluded for specific purposes, political or economic. The result is a confederation. This is intended to be a permanent arrangement and common institutions are established for the carrying out of the purposes of the Union. These institutions are usually very few in number, and generally the decisions of these common bodies have only a recommendatory as opposed to a mandatory force. The typical cases are of the American Confederation (1781-1789), the Swiss Confederation (upto 1874), and the German Confederation (upto 1874).

Lastly there is the federal union in which the federating states definitely lose their erstwhile independent character, and while retaining some powers in their separate capacities for internal administration they become one state for the purpose of exercising all the other powers of government, and with this object in view they create above themselves a new supreme power in the form of the federal Government.

Thus all unions or political combinations apart from those of a mixed type like the Austro-Hungarian Monarchy fall within the four kinds enumerated above; namely (i) personal unions, (ii) real unions, (iii) leagues or confederacies, or (iv) federations. The first three kinds of unions differ

from federations in this important respect that in (i) and (iii) the uniting states retain their independent characters but unite for a few advantages, and in (ii) they lose their separate characters even in their internal autonomy and become a unitary state, while in the case of federations the federating states lose their sovereign character but retain their internal independence, setting up above themselves a new supreme authority which becomes the real Government of the federated country. These federations form the subject of the present discussions and investigation.

2. Federalism Defined.

When two or more states combine to establish a new state retaining at the same time a place and status for themselves inside the new organisation, they are said to form a federation. It may sometimes happen that a state is split up into two or more units with the definite object of forming a federal union among them. This actually happened in the case of Canada in the year 1867 when the Union of Canada was split into two provinces (the province of Quebec and the province of Ontario), and the British North America Act was passed establishing a federal government in that Colony.* And the process has got to be

* The following words in the Resolution passed by South African Cape House of Assembly are interesting in this connection. "And as it may be expedient that the Colony should be divided into three or more Provincial Governments for the management of their domestic affairs, formed into a Federative Union under a general Government for the management of affairs affecting the interest and relations of the United Colony....." Resolution appointing a Commission of Inquiry, passed on 9 June, 1871. Newton. 'The Unification of South Africa,' Vol. 1, p. 12.

the same if it is decided to establish a federation in British India. So that the tendency that creates or may create a federation is not only aggregative but also disruptive in its nature according as the centripetal or centrifugal forces are stronger.

Federation is, therefore, the creation of a sacred contract to which the federating states are parties. By entering into this contract the parties definitely lose a part of their independence, but in return they get the benefits which attend such a combination. Thus "the name of Federal Government may, in this wider sense, be applied to any union of component members, where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of merely municipal freedom."*

It should, however, be mentioned that under a federal form of Government the central, the more properly speaking the national, Government co-exists with the various Governments of the states that compose the federation. Federalism, therefore, presumes loss of a part of independence by the State Governments individually. For if the individual states do not lose their independent character there can be no true federation. It can only be a confederacy. The state Governments are given, or they retain, certain spheres of administration definitely stated in the constitution. So that as Prof. Dicey has remarked, "Federalism means the distribution of the force of

* Freeman, 'History of Federal Government,' Vol. I, p. 3.

the state among a number of co-ordinate bodies each originating in and controlled by the constitution."* And similarly the federal Government, in its turn, exercises its authority within the spheres defined in the same constitution.

A federal constitution differs from a unitary constitution in this sense that whereas the latter recognises the existence of only one Government which is supreme in all matters concerning the state—without any kind of reservation whatsoever—the former, being by its very nature a contractual agreement, necessarily distributes the powers pertaining to administration between the several state governments on the one hand, and the federal government on the other. So that "Two requisites seem necessary to constitute a Federal Government. On the one hand, each of the members of the union must be wholly independent in those matters which concern each member only. On the other hand, all must be subject to a common power in those matters which concern the whole body of members collectively".† And by a federal constitution we mean that constitution by which "one important part of Government is discharged by a number of different authorities belonging each to one district or province of the country, and another part of the Government is discharged by a single

* Dicey, 'Law of the Constitution,' Edition 8th. p. 153.

Encyclopaedia Britannica, Edition 13th. Vol. X, p. 233.

A. P. Newton, 'Federal and Unified Constitutions,' 1923 Edition, p. 2 (Introduction).

A. P. Poley. 'The Federal Systems of the United States and the British Empire,' 1913 Edition, p. 1.

† Freeman. 'History of Federal Government', vol. 1. pp. 2-3.

authority distinct from all the others and belonging to the whole country".*

To sum up, in a federation the authority of the several Governments of the States is in juxtaposition with that of the Central Government. Federalism presumes that the Central Government cannot in any way encroach upon the authority of the states. Although the Central Government covers the whole country and the State Governments definite territories which are integral parts of that country, yet neither the Central Government can interfere with the powers of the Governments of the States nor the *vice versa*.† Even then the governmental machinery runs smoothly because the powers of the two sets of governments are more or less exclusive and clearly defined and assigned by the constitution. To borrow an illustration from geometry, we can say that in a federation the states are like circles touching each other externally and not internally, the circle of the Central Government surrounding them all.

3. Essential Characteristics of a Federal Constitution.

This brings us to the characteristics of a federal constitution. A close study of the constitutions and actual working of all federations

* Lord Charnwood. 'The Federal Solution', p. 55.

† "We may then recognize as a true and perfect Federal Commonwealth any collection of states in which it is equally unlawful for the Central Power to interfere with the purely internal legislation of the several members and for the several members to enter into any diplomatic relations with other powers." Freeman. 'History of Federal Government,' Vol 1, p. 10. Here Freeman has cited only diplomatic relations as the sphere of the Central Government, but there are many other powers of that government, which will be discussed in Chapter III.

shows that there are certain points common to all of them, which distinguish them from unitary constitutions. These we shall now discuss in detail.

(a) *The Importance of the Constitution and Its written-rigid Character.*

No doubt, all constitutions, whether unitary or federal, are legally supreme so long as they last. But in a federation the constitution occupies a place of peculiar importance which results from the fact that it is federal. As has been pointed out, a federal constitution is an agreement between a number of states that combine together to establish over themselves a new government to which they, by mutual agreement and of their free will, assign a certain part of their authority. The federal constitution, which thus comes into being by this deliberate resignation of some of their powers by the component states, contains the terms and the conditions of the contract between those states on the one hand and the newly established central Government on the other. So that when the federation has been established each government, whether state or central, exercises its authority just in accordance with the provisions contained in the constitution and is not supposed to go against any of its provisions. For if it did there can be no limit to its power and hence neither the central government nor any of the state governments can understand the extent of its own authority or that of the other; and therefore, there can be no security to any of them and this insecurity is bound to result in utter confusion which might ultimately lead to the subversion of the polity itself. Now it is clear that in unitary states, in general, there is not this peculiar

agreement or delimitation of powers of government or this existence of several governments; necessarily, therefore, the constitution of a federal state becomes peculiarly important as contradistinguished from a unitary constitution.

To illustrate this special feature of a federal constitution a few examples may be mentioned. Great Britain is a unitary state with an unwritten and most flexible constitution. There the powers of the legislature, *i. e.* the Parliament, are unrestricted.* Parliament can easily, if it likes and if the country supports it, change the form of Government, even abolish monarchy. It can change its own constitution, abolish the House of Lords or pass any other important enactment† in the same way as it can pass a turn-pike bill, and it cannot, for that, be questioned in a court of law. In fact, as Sir John Holt has pointed out, "An Act of Parliament can do no wrong, though it may do several things that look pretty odd."‡ France, too, has a unitary constitution which is written and rigid and which prescribes limits to the powers of its legislature, *e. g.* the legislature cannot change the Republican form of Government though the validity of its acts cannot be

* Cf. the well-known remark of De Lolme that "It is a fundamental principle with the English lawyers that Parliament can do every thing except making a woman a man, and a man a woman."

† The passing of the Reforms Acts of 1832, 1867, 1884, 1911 and the recent enfranchising of women are examples.

‡ In the Judgment in the case "*City of London Versus Wood*" (1700) 12 Mod, 669, at pp. 687—688 quoted by Riddell at p. 12, note 12, in his book "*The Canadian Constitution in Form and in Fact.*"

questioned in a law court.* But the constitution of France can, in all other respects, be easily altered and for that matter materially revised. The rigidity is not, therefore, very great because the constitution can be largely made to take any form the French legislature likes to give it. Contrary to all this, there is the constitution of any of the federations which has, by delimiting the powers of every legislature under it and by becoming the anvil on which the validity or otherwise of every legislative enactment of any of its legislatures is tested and also by holding the equipoise between the several governments concerned, become supremely important in a way in which no unitary constitution could ever possibly be conceived to be. And no legislature in a federation can enact any law repugnant to the constitution, for if it shall do so, such a law shall be invalidated by the functionary authorised on this behalf by the constitution itself. It goes without saying that the provisions of a federal constitution are the only guarantee which the federating states or the central Government accept for their existence.

Now the constitution being supreme and its provisions a contract between the combining states, it follows that it should be so defined as to be clearly and unambiguously understood. That is to say, it should be a written document. Though the modern tendency, aiming at precision and clarity, is in favour of having written constitutions and with the singular exception of Great Britain almost all important nations have their constitutions in a written form, yet a unitary state can

* Constitutional Law of August 14, 1884. Vide R. Poincaré, "How France is Governed," pp. 162-163.

easily afford to have an unwritten constitution, but a federation cannot but have a written constitution. For when a federation is about to be formed the several federating states have to decide upon the terms on which they are prepared to federate. This is a complicated contract affecting every sphere of their erstwhile absolute independence and so they have generally to draw the terms in clear and definite words which have necessarily to be reduced to writing if future interpretations are to be clear and misunderstandings are to be avoided. An attempt is bound to be made to settle all possible questions that are likely to arise even in the remote future, though in certain cases some extremely complicated matters may be left unsolved. In the United States of America the fathers of the federal constitution knowingly shelved the problem of secession of states as the handling of the same threatened the scheme of the federation itself.

Again, a feature of the supremacy of a federal constitution is its peculiar rigidity. No doubt all written constitutions in modern days are more or less rigid, but the rigidity of a federal constitution is an inherent feature of its character and cannot be avoided as may be done in the case of a unitary state. After deliberations lasting over a long period and with due regard to all aspects of the question it is put into the final form; it would, therefore, be sheer folly to expose it to easy and frequent changes. The states in a federation practically surrender their individual sovereignty on certain conditions mutually agreed upon, after very great sacrifices on their part, and naturally they do so under specific guarantee for the maintenance and observance of those conditions by all

the parties concerned, in the discussion of which each state individually and all states collectively take their part and contribute their share. Hence the constitution which is the result of such prolonged discussions cannot be left flexible as the constitution of any unitary state can easily be. Apart from all this, it is common experience that legislatures are, sometimes, elected in an excitement produced by the voters' attaching an undue importance to an ordinary question. In such feverish heat of excitement persons are elected to legislatures, who are lacking in the qualities necessary in a capable and far-sighted legislator. Now to allow unfit and inexperienced persons, who have risen to the position of legislators merely by virtue of having played upon the sentiments of the voters, to change the constitution which had been framed after deep and thoughtful deliberations by the most capable persons is to defeat the real object of peaceful and orderly administration of a federation. It requires the talents of men well versed in the art of constitution-making to suggest and incorporate necessary changes in a document of the complex and peculiar nature of a federal constitution, which might satisfy the many interests and indeed prove to be of a lasting nature.

But, at the same time, it seems inconceivable that a constitution framed by the people of a particular generation should be incapable of changes in the light of further needs and experience. For in drawing up a constitution it is difficult to understand precisely all the factors even of that time, much more so to provide for the future. But the authority to amend a federal constitution must not and cannot be vested in a body in which each state and all states have not an effective voice.

for the exercise of their powers. In the same way the transfer of a part of authority from the state governments to the federal government involves the transfer of such part of the citizens' allegiance from the former to the latter government, as is necessarily connected with the exercise of that transferred part of authority which is now vested in the federal government.* The federal government, therefore, exercises direct authority over the individual citizens of the states for all those purposes that fall within its sphere of activity and also over the states as communities. By virtue of

*".....the federal government, in turn, in the exercise of those specific powers acts directly, not only on the communities making up the federation, but on each individual citizen... and the citizens of a federation consequently owe a double allegiance, one to the state, and the other to the federal government. They live under two sets of laws, the laws of the state and the laws of the federal government." *Encyclopaedia Britannica*. Vol. X, p. 233.

Also J. Bryce. "Studies in History and Jurisprudence," Vol. II, p. 490.

Dealing with this subject A. P. Newton writes:—

"The Central Government acts not only upon the associated states but also directly upon their citizens. '*Federal and Unified Constitutions*,' 1923 Ed. p. 5.

Bryce is quite clear on this point. He defines properly called federal states as 'States in which the Central Government exercises direct power over the citizens of the component communities.' '*Constitutions*,' p. 27.

Again on page 288 of this book Bryce reiterates that "The essential feature.....consists in the existence above every individual citizen of two authorities, that of the State, or Canton (as in Switzerland) or Provinces (as in Canada), to which he belongs, and that of the Nation, which includes all the States, and operates with equal force upon all their citizens alike. Thus each citizen has an allegiance which is double, being due both to his own particular State and to the Nation. He lives under two sets of laws, the laws of his State and the laws of the Nation. He obeys two sets of officials, those of his State and those of the Nation, and pays two sets of taxes,

the terms of the compact of federation the several states transfer their authority over certain spheres of state activity. These spheres of governmental activity cover all the states and as a necessary corollary of this transfer of power the states lose their external independent character and the federal government assumes all rights to enter into international matters as an independent nation and all the obligations into which the federal government enters with other nations *ipso facto* become binding on the states. But the internal independence of the states remains unimpaired.

So that in his every day life a citizen in a federation is under two governments, the central and the state. It is true that the sphere of authority of the state government very vitally affects the citizen's activities at almost every turn, e.g. in Education, Health, Sanitation, Law and Order and in the case of most of the taxes he pays. But in such other matters as Posts and Telegraph, Railways, military Laws, and his dealings with foreign countries, he truly feels the hand of the central government on himself and for any violation of the rules or laws of this government he is as much directly answerable to it as he is to the state government when he infringes the state laws, and the state government cannot protect him from the punishment which the central besides whatever local taxes or rates his city or county may impose."

Now this theory of double citizenship in a federation has been given effect to in almost all the federal constitutions of the world. Article XIV of the constitution of the United States of America lays down that "All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside....."

government chooses to inflict on him. And this is essentially the result of the federal tie that binds the state to the central government, because "The test of Union is the utter sovereignty of the Central Government, which must be free and able to act directly upon, and to touch, without the favour of any intermediary, the humblest of its citizens in the remotest corners of the dominions. Its subjects are not states but people....."* That is to say, in its own sphere of authority, the Central Government is independent in the same manner as the State Government is in its own, as Freeman points out: "The Federation is as truly sovereign in its own department as the state is in its own department. Resistance to the lawful commands of its Government is as much rebellion as resistance to the lawful commands of a monarch. An injury done by one state to another state or to a citizen of another state is not a matter of international wrong; it is a mere breach of the peace, to be rectified by the Federal Courts or, if need be, to be chastised by the Federal Army. The theory is exactly the same..."†

And this has not created any practical inconvenience or trouble to the citizen in the federation, because the two Governments have distinctly separate spheres of activity and there are two different sets of laws which are not mutually contradictory or antagonistic but supplementary, with different objects, but all combined together forming the complete laws of the federation.

It is true that in modern days administrative

* F. S. Oliver, 'Alexander Hamilton,' p. 452.

† Freeman, 'History of Federal Government,' Vol. I. pp. 102-103.

decentralization is on the increase even in a unitary state and there are local boards and municipalities dealing with local subjects. But the state government in a federation greatly differs from these bodies in this sense that whereas a state government exists inspite of the central government and independent of its control, these local bodies owe their existence to a supreme Government which creates them and can also destroy them, and their laws are strictly bye-laws. In short, in a federation the two governments, central and state, exist together, a characteristic only of a federal type of polity.

(c) *Special Position of the Judiciary.*

The third and the last characteristic of a federal constitution is the special position of its Judiciary. This characteristic is a natural sequence of the first two, *viz.* the supremacy of the constitution and the co-existence of two governments. The federal constitution being the supreme law of the land, embodying the definite terms of contract between the federating states and the co-existence of two governments involving division of powers specifically assigned to each, it is necessary that there must be some agency to uphold the constitution and to keep the two governments within proper limits. For it is not at all surprising that the various state governments or the central government may sometimes pass laws—the probability is that they would often do so—which may contravene the spirit of the constitution and may thus transgress upon each other's authority. Who should then guard against this transgression of authority? Again, in the actual exercise of their authority, two neighbouring states often happen to

disagree on particular issues. Also there may be a conflict of views between the central and the state governments. How are these conflicts to be decided and disputes settled? Evidently the proper agency to settle these conflicts and to maintain the supremacy of the constitution, and to guard against its encroachment, whether by the central government or by a state government, should be of a strictly judicial character with clear authority derived neither from the one nor from the other of these Governments alone, for in that case that judicial body may tend to degenerate into a partisan of the Government establishing it, but from the constitution itself as it is respected by all the parties concerned. The Supreme Court which the federal constitution generally provides for is vested with the sole and undisputed authority of settling all disputes between the state governments themselves, and between the central government on the one hand and the state governments on the other.

In constitutions where the legislature is supreme, the judiciary has no such function to perform although it can exercise some restraint by its opinions. But in the case of a federal constitution the necessity of a judiciary which should interpret the constitution and adjudge the validity or otherwise of a legislative enactment of the central or of state governments cannot be questioned. In fact, it is this special position of the judiciary which keeps a federal constitution from falling down.

4. Irrevocability of the Federal Tie.

From the strictly legal point of view, a federation is the result of the cumulative consent of not

in the Congress. As a result of their relations with France, the Congress passed the Alien and Sedition Acts. This action of the Congress enraged the Republican party who met to express their disapproval of these Acts and passed the famous Virginia and Kentucky Resolutions which expressed the view that every state had a right to nullify within its boundaries such acts of the federal government, as were, in its opinion, in excess of the powers of the Congress. The opponents, the federalists, on the other hand, insisted that the sole authority to decide the unconstitutionality of any act of the Congress and to check it from going beyond its specified powers was the Supreme Court. The situation was for the time being saved by the repeal of the Alien and Sedition Acts. But again in the year 1812, when war broke out, the states of New England, which were opposed to the war, threatened to go out of the federation and proposed resolutions affirming the rights of individual states to nullify those acts of the Congress to which they were opposed. Again in the year 1828 the Congress imposed tariff which adversely affected the interests of the people of south Carolina who, not finding supporters in other states, contented themselves by invalidating the tariff in their state. This action seemed to precipitate the issue of the secession of states, but the Congress passed a compromising resolution which postponed the issue.

It was the recurrence of these conflicts of interests that brought forward the two opposing theories of Calhoun and Webster. Calhoun advocated the right of a state to nullify within its borders any acts of the Congress and also defended the right of a state even to go out of the

union. Although he did not actually advocate this right of secession, yet his preachings went very far in actuating the Southern States in 1861 to revolt against the authority of the Central Government. Calhoun held that the states had entered into the compact of federation to vest the federal government with the authority of exercising certain specified powers and thus they had every right to withdraw that authority from the body which they had themselves, of their free will, brought into being, if at any time they found that their interests suffered at the hands of that body. He maintained that sovereignty being from its nature indivisible the states could not transfer any part of it to another body. That is to say, he advocated the doctrine of nullification as well as that of secession. He could not allow the majority to tyrannise over the minority by enacting laws prejudicial to the latter's interests. Thus Calhoun based his theory on two principles, (1) Sovereignty being indivisible, two bodies cannot be sovereign in the same area or over the same people, and (2) when a certain amount of authority can be delegated by a body when it is in its interests to do so, that authority can also be withdrawn whenever the withdrawal is in the interests of the delegating body. There is enough matter for serious consideration in these arguments as also in those advanced by Daniel Webster who advocated the Nationalist Theory of Union. Webster contended that the authority of the Central Government was derived not from the governments of the States but from the people of all the states taken as a whole. He supported his doctrine by the actual words in which the preamble to the U.S.A. constitution was drawn up. This preamble

runs, "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Webster's supporters, the members of the Federalist party, among them notably Abraham Lincoln, who supported him when the Civil War became imminent, challenged the sovereignty of the states on the ground that prior to the union these states were subordinate to the British Parliament and were, therefore, by no means sovereign. Subsequent events, the chief of them being the decisions of the Supreme Court,* strengthened the view of the Federalists.

Let us now dispassionately consider the pros and cons of the two conflicting theories. The problem resolves itself into two factors, *viz.* (1) the location of sovereignty in a federation, and (2) the rights of the individual states to assert their will. Federalism is, from its very nature, a companion of democracy. Where democratic institutions are not in existence federalism does not fully thrive, for the basic principle underlying federalism is the recognition of the rights of smaller political communities to develop along their own lines. Now if this right is to be conceded to a state within a federation it goes without saying that it cannot be denied to smaller groups of people within the state or, for the matter of that, to individual citizens themselves. To enable a political community to thrive and prosper it is essential that its individual

* A fuller treatment of the decisions of the Supreme Court is made in Chapter III.

members should be free to develop their constructive faculties. For it is only the result of the cumulative efforts of the individual citizens of a state that is, in a wider outlook, considered to be the development of the state itself. The citizens can exercise this freedom only where they have the opportunities to exercise their wills. Prof. Laski has rightly remarked, "The structure of our social organization must be federal if it is to be adequate. Its pattern involves, not myself and the state, my groups and the state, but all these and their inter-relationships."* This is exactly what democracy aims at. Thus, federalism being less compatible with any other form of polity than a democracy, it is clear that sovereignty in a federation is located in the individuals of all the states taken as a whole and nowhere else. The state governments cannot usurp that sovereignty and exercise the right of secession from the federal union.

Now remains the second point, *viz.* the right of a minority to assert its will. It is true that in a democratic polity like a federation every organised group of citizens who may form a minority has a right to free existence and to assert its will, and the majority has no right to tyrannize over the minority. But it is also true that the interests of majority should not be allowed to suffer because of the antagonistic views of the minority. In all forms of polity we can at best secure the greatest good of the greatest number with the minimum of trouble and annoyance to the few. We cannot plant a government wherein each and every individual will be satisfied with the environments in which he is placed. Such an Utopia is only the

* H. J. Laski. 'A Grammar of Politics,' 2nd Ed. p. 262.

creation of an imaginative mind, existing not on this earth but in a dream-land. This should not, however, be supposed to mean that a minority, however insignificant in number, is to be left helpless and impotent to exercise its faculties—this will mean loss of so many minds to the cumulative efforts of the whole community. What is, therefore, practicable is a compromise or agreement on a maximum scale, because if an unhampered ruling majority will be tyrannical to the minority, a ruling minority will surely result in political stagnation and ultimately in disruption.

Human energy is essentially kinetic and not static. Therefore conflicts are sure to arise in the future not only between one individual and another but also between one political community and another. How best to adjust differences and remove the causes of conflicts is, therefore, the chief problem in a federation where the different state governments and the central government are sometimes bound to disagree. These rival bodies—central government on the one hand and state governments on the other—having derived supreme powers of legislation and action within different spheres of political activity, are sure to feel jealous of each other. Whatever great efforts be made to remove the causes of conflicts and to arrive at compromises “the possibility of conflict though it can be minimised, is never finally absent.”* When once the central government has, after due deliberation, passed a law most states and most people are sure to respect it for the simple reason that the legislature is bound to take cognisance of the majority view and the popular feeling, and unless the law is acceptable to the majority it

*Laski. ‘A Grammar of Politics,’ 2nd Edition p. 244.

cannot possibly be passed by the legislature which generally mirrors the views of the majority. But if a minority finds the law unacceptable to itself, the best way to see its will prevail is to convince the majority and convert it to its own views by discussion, persuasion, and all other constitutional means. It is then the duty of the majority to amend the law in such a way that the minority may respect it. But it must not be forgotten that "Respect for law cannot be guaranteed, all that we can do is to reduce the area of disrespect it will encounter."* In any case the majority must listen to the wishes of the minority for "We can then evaluate the factors of solution before the differences are precipitated. We can examine before the request becomes a demand and the demand a threat."† It is true that the views of the majority are often right or at least beneficial to the community. But even a majority loses its importance after some time and degenerates into a minority. The changes of ministries in countries having parliamentary institutions is a sufficient proof of this. Prof. Laski rightly observes: "It is the record of all history that no class of men can retain over a period sufficient moral integrity to direct the lives of others."‡ Causes of minor conflicts are easy to be removed, it is only when the conflict has assumed huge dimensions that a political catastrophe is apprehended. In such cases the majority must presume that there is some grave wrong done to the wishes of the minority, and that that wrong must be righted by squarely facing facts and adjusting the differences.

* Laski. 'A Grammar of Politics,' 2nd Ed. p. 244.

† Ibid. p. 255.

‡ Ibid. p. 290.

"Grievance never proceeds to rebellion unless it is deeply grounded in a sense of wrong."*

Whenever one State government, or more than one, who form the minority find that their interests are seriously suffering under any of the laws of the central government, that minority party should wait, argue, and try to get the law so changed as to make it amenable to its wishes. It has no right whatever to secede from the union when once the entire people of that union have formed that central body. For if this right of secession be conceded to the recalcitrant states the whole polity loses its stability and there is no certainty where this disruption might lead to. In a truly federal union—properly formed after exploring all avenues of community of interests and finding them more strong than points of conflict—there cannot frequently arise grave disputes which may compel a part to go out of it. In fact, whenever the union breaks up after the secession of a part, it must be presumed that the union was from its nature not federal but only an alliance. Thus we conclude that once a federation has been formed after the states so federating have taken into consideration all the implications of such a union the states have no right of secession from it.

*Ibid. p. 284.

CHAPTER II

DEVELOPMENT OF FEDERALISM

Introductory.

The history of federal governments makes it abundantly clear that different countries, in different ages of history, adopted federal forms of government for different reasons. They had various problems of their own to solve and the necessity for the application of federalism to a solution of those problems was the outcome of their circumstances. In each country the factors that enabled federal polity to take root in it were all its own and were not necessarily common to any other country. It is, therefore, clear that there is no particular set of circumstances alone which helps the growth of federalism. In fact there are many. And this chapter is an attempt to investigate the various factors that have contributed to the growth of federalism. It also deals with the nature of federalism.

1. Factors that have contributed to the Growth of Federalism.

Problems in political science, unlike those in physical science, do not follow any fixed rules and laws. It is for this reason that political writers and philosophers hold differing views on the same point. Yet mathematical exactitude apart, there are certain principles and lines of action in

political growth which fairly accurately apply to the solution of certain political problems. Keeping this point in view we begin our present investigation of the factors that have either (i) by helping its formation, or, (ii) by hindering its disintegration, contributed to the growth of federalism.

(a) *Geographical Contiguity of the Country.*

Federalism is, in its essence, a close co-operation or union between political states. Necessarily, therefore, the first thing which helps the union or contributes to the growth of sympathies between political states is neighbourhood. Nearness of existence finds its counterpart in the creation of a certain imperceptible, yet, by no means, inappreciable, bond of union which does not, generally speaking, exist between two nations living at a great distance from one another. This has very well been observed in the formation of federations. From the most ancient times right upto the present day political union of a federal character has been successful only between states whose boundaries touch each other. In ancient Greece we find only those city-states forming unions which lay close to each other.

During the Middle Ages the Hanseatic League was formed between cities which were situated widely apart. But distance, later, led to the loosening of the bonds of union and ultimately to the breaking up of the League.

It was the influence of neighbourhood that enabled the British Colonies in North America to federate together in 1867. It is their contiguity which has kept the several cantons of Switzerland together as one nation despite several other disintegrating factors. Hamilton had foreshadowed

the dangers of the thirteen states, lying in close proximity to each other, remaining as separate and independent states, and his warning did not go unheeded. The thirteen States of America united and spread towards the west over a vast neighbouring area.

The fathers of the Australian Commonwealth had longed for the inclusion of New Zealand in the Australian Federation, but the sea more than counterbalanced the aggregating tendencies and their pious hopes have not been fulfilled even upto the present day. And for the same reason New Foundland did not join the Dominion of Canada. Again the idea of establishing federal union between the various members of the so-called Commonwealth of British nations has not gone beyond the sphere of academic discussion mainly, among other reasons, on account of the long long distances that separate these nations. The ocean has proved too formidable to allow federal ties to grow stronger, although other aggregating tendencies favour a federal union. On the other hand, the various provinces of South Africa united in 1900 as the geographical contiguity of the country proved more powerful than racial animosities and other strifes.*

Hamilton had expressed similar sentiments regarding the United States of America. He said,

* Speaking of this physical feature of South Africa R. H. Brand says :

"In no country is the growth of a common nationality more certain, and the creation of one controlling government more imperative. The country, vast as it is in area, is destined by nature to be one. Its physical features are uniform, and there are no natural barriers between one part and another. The population forms, and in reality formed even before the war, one body politic." 'Union of South Africa,' pp. 8-9.

"It has often given me pleasure to observe, that independent America was not composed of detached and distant territories, but one connected, fertile, wide-spreading country was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities."*

We conclude, therefore, that physical neighbourhood and contiguity of the country have always been the most important, even an essential, factor in the formation of federations.

(b) *The Problem of Defence.*

And yet neighbourhood alone would not always induce two states to federate if the necessity be not dictated by several other factors among which the problem of defence occupies a very prominent place. For quite a long time the Australian colonies had kept on well under their separate independent governments without thinking of closer union. It was the menace of foreign powers who threatened the peace of the Pacific, that hastened the necessity for federal union. Viscount Bryce remarks: "However after 1883 the general scramble among the great European Powers for unoccupied territories all over the

*The Federalist, No. II.

administered, our trade prudently regulated, our militia properly organised and disciplined, our resources and finances discreetly managed, our credit re-established, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us either destitute of an effectual government (each state doing right or wrong as to its rulers may seem convenient), or split into three or four independent and probably discordant republics or confederacies, one inclining to Britain, another to France and a third to Spain, and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes. How liable would she become not only to their contempt, but to their outrage ; and how soon would dear bought experience proclaim that when a people or family so divide, it never fails to be against themselves.*"

In ancient days the members of the Achæan League and the Amphictyonic League had kept closer together for, among other reasons, defending themselves against the attacks of their adversaries. The Confederacy of the Netherlands was formed with the primary object of opposing the attack of the Spanish King on their liberties.† We thus find that the presence of common danger by showing the need for common defensive measure has effectively influenced the moulding of the character of political societies and directly helped the cause of federalism.

(c) *Economic Factors.*

If neighbourhood and defence have effected

* Federalist, No. IV. Jay has dealt with this subject in detail in Federalist. No. III.

† The first three Articles of the Act of Union of the United Provinces of the Netherlands, dated January 23rd, 1579.

union between different political groups the temptation of material gains has, in no less degree, kept them closer together. The member-towns of the Hanseatic League formed themselves into a union for commercial purposes, to monopolise the trade of the North Sea and the Baltic Sea. In this case commercial gain was the chief unifying factor. And so upon the formation of the East India Company and the spread of Protestantism, which reduced the demand for dry herring, their trade suffered and this contributed to the breaking up of the League. The advantages of a common tariff, internal trade, fisheries and foreign trade went a great way in federating the States of America in 1787.* Hamilton, discussing the commercial advantages of union wrote: "There are rights of great moment to the trade of America which are rights of the Union—I allude to the fisheries, to the navigation of the Western lakes, and to that of the Mississippi. The dissolution of the Confederacy would give room for delicate questions concerning the future existence of these rights; which the interest of more powerful partners would hardly fail to solve to our disadvantage."†

Discussing the advantages of union he says; "The veins of commerce in every part will be replenished, and will acquire additional motion and vigour from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of different states."‡

In Canada, too, New Brunswick, Nova Scotia and Prince Edward Island joined the Dominion of

* Federalist, No. XI.

† Ibid.

‡ Ibid

Canada as they saw in that union great advantages to their commerce in the creation of greater and better communications, railways and lakes, seaports and mercantile marine.* The union of Upper and Lower Canada opened the prospect of a better arrangement of customs and tariffs.† While the fathers of the Australian Commonwealth were putting their heads together for evolving a constitution to unite the independent colonies, economic factors were playing an important part in determining the views of the public. In fact the first referendum taken in New South Wales did not favour a federal union simply because the people of that colony were afraid that the union might result in the adoption of protection. Sir Henry Parkes, the leader of the Free Trade Party of New South Wales, had been severely criticised for trying to form an alliance with the protectionists of Victoria.‡ These views, though they ultimately proved erroneous, delayed the formation of the Australian federation, because at that

* "In as much as the provinces of Canada, Nova Scotia, and New Brunswick have joined in a declaration that the construction of the Inter colonial Railway is essential to the consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick and have consequently agreed that provision should be made for its immediate construction by the Government of Canada; therefore, in order to give effect to that Agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement within six months after the Union, of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable Speed."

British North America Act, Section 145.

Also Lucas' Introduction to Durham's Report, vol. I, pp. 204-5.

† Durham's Report, vol. II, pp. 308-309, and pp. 313-319.

‡ Mr. David Buchanan, a barrister and a member of

time the two commercial principles—Protection and Free Trade—were being intensively espoused by their respective followers who saw in the union some imaginary dangers. And yet it was the commercial gain which, together with other advantages, was held out as an olive branch to catch the necessary number of votes to create due sanction behind the demand for federation. In the Act itself provision had been made for adjustment of financial questions for a number of years till all the colonies came to occupy the same position. The whole of Chapter IV of the Constitution of Australia is devoted to this question. A few articles very well illustrate the settlement ;

“Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.*”

“On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.”†

“The Commonwealth shall not by any law or regulation of trade or commerce, abridge the right of a State or the residents therein to the reasonable

N. S. W. Assembly, wrote in the ‘Sydney Morning Herald’ of January 21, 1889 ; “Sir Henry Parkes sees that if he maintain his Free Trade Principles as a condition precedent to Federation, Federation can never be brought about ; and therefore he is prepared to purchase Federation by throwing overboard his Free Trade principles. But let Sir Henry Parkes stand as true as steel to his Free Trade principles, or refuse to federate unless Free Trade is made the policy of the Federate Colonies. It would avail the Free Trade party nothing, Federation would be carried over their heads by the Protectionists, and Protection declared by the Federal Parliament to be the policy for evermore.” “Making of Australian Commonwealth,” p. 34.

* Article 88.

† Article 92.

use of the waters of rivers for conservation or irrigation."* No less important was the Railway question which determined the views of many waverers for the federal cause. †

When the different colonies of South Africa were to unite, the two questions that were in the front were railways and sea-ports, the possession of which was considered to be a question of life and death to the colonies as affecting their future prosperity. "The Transvaal, with its large industrial centre in Johannesburg, and without any great need for customs and revenue, had wished to revise the tariff in the direction of free trade, while the coast colonies, believing that, if manufacturers were protected, they would spring up, not in the interior, but at the coast, owing to the lower cost of living and lower wages there, were in favour of higher protection, particularly as that policy coincided with their desire for more revenue. On the other hand, a union of any kind was endangered by the very strong desire of the agricultural population of the Transvaal for protection against the farmers of the Cape Colony. Transvaal farmers regarded the great market of

* Article 100.

† The following Articles settled the railway question:—

"The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State." Article 98.

"The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways." Article 102.

Also Article 104.

Johannesburg as peculiarly their own preserve, and were clamorous for protection against the successful competition from the Cape."* But the economic gain that was to come to them as a result of the union ultimately dismissed all other objections and effected the union.

It requires no great stretch of imagination to perceive that a federation opens a wider field, a bigger market and greater commercial facilities to all the members. Just as different individuals and traders combine to float trading companies to reap the resulting commercial advantages of united efforts, similarly different political groups or states come closer together when, along with other advantages, they see in the union better opportunities for expanding their commerce and thus adding to their prosperity. It is easy to understand the manifold difficulties which the traders have to meet when they come across diversities in weights, measures, and coinage in traversing different countries or different parts of the same country. When these diversities are removed and uniformity established, merchants find conveniences which are powerful incentives to union between those states. These principles, which concern economic life of nations, have very largely contributed to the growth of federalism as evidenced in the history of all modern federations. In fact, the greed of men has played upon their sentiments and eclipsed the enmity which, in several cases, had existed between neighbourly peoples.

* Brand. 'Union of South Africa,' p. 17.

Ibid. p. 18. (This refers to railways.)

These questions were solved by the provisions of Articles 127-131 of the Constitution of South Africa, to the satisfaction of all the parties concerned,

(d) Political Motives.

The fact is indisputably correct that a bigger state by virtue of its greater numbers, larger area, and wider resourcefulness commands greater respect than a smaller one. Therefore in all international matters the views of a big state often prevail. Jay had devoted a large space in the *Federalist* to this aspect of the question and he had very wisely warned his countrymen against the dangers of dividing the Confederacy into smaller independent states or into two or more confederacies. He wrote: "One government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of polity. It can harmonise, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each. In the formation of treaties, it will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole. It can apply the resources and power of the whole to the defence of any particular part, and that more easily and expeditiously than State Governments or separate confederacies can possibly do, for want of concert and unity of system."* He had brought home to the minds of the people of America that it is always dangerous to allow jealousy to subsist between neighbouring independent states. He remarked: "Leave America divided into thirteen or, if you please, into three or four independent governments—what armies could they raise or pay—what fleets could they ever hope to have? If one was attacked, would the others

* *Federalist*, No. IV.

fly to its succor, and spend their blood and money in its defence? Would there be no danger of their being flattered into neutrality by its specious promises, or seduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for the sake of neighbours, of whom perhaps they have been jealous, and whose importance they are content to see diminished. Although such conduct would not be wise, it would, nevertheless, be natural. The history of the states of Greece, and of other countries, abounds with such instances, and it is not improbable that what has so often happened would, under similar circumstances, happen again.”* His views were not ephemeral, they are of permanent importance and application by their nature. The same view prevailed with the people of Switzerland about the year 1815 when the three races inhabiting that small country united to form a federation, and since then Switzerland has commanded a respectable position in all European politics.

Though in the present League of Nations all the member nations theoretically enjoy equality of status, the fact cannot be concealed that the British Empire, because of its largeness of size and extent, always commands greater respect in its counsels. Supposing any disruptive tendency begins in the Empire resulting in its dismemberment, its views would not perhaps be respected in the same degree as is now the case.

This principle has been working ever since political history began.† It was for this reason that Bismarck had formed the German Empire,

* Ibid.

† “A strong sense of the value and blessings of union induced the people, at a very early period, to institute a

Buest and Francis Deak had confederated Austria and Hungary, that the Australians had united together, that the South Africanders had overcome the strong disruptive forces, and the efforts of them all had resulted in the making of bigger and more powerful nations. It was, in fact, the glory of enjoying the privileges of being the citizens of big states that the peoples of these countries knowingly and purposely formed unions even by overcoming the enormous difficulties which lay in their path. Similar sentiments guided the proceedings of the Assembly of Nova Scotia which in 1854, unanimously resolved that "the union or confederation of the British provinces, while calculated to perpetuate their connection with the parent state, will promote their advancement and prosperity, increase their strength and influence, and elevate their position,"* and thus sowed the first seeds of the formation of the Dominion of Canada.

If the several states lying in the heart of Europe had not formed the German Republic, they would not have individually occupied that important position which the Republic has done after the War. It has gained a position of equality with the first class powers on the Council of the League of Nations.

federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time when their habitations were in flames when many of their citizens were bleeding, and when the progress of hostility and desolation left little room for those calm and mature inquiries and reflections which must ever precede the formation of a wise and well-balanced government for a free people." *Federalist*, No. II.

*Quoted in the life of Sir John A. Macdonald, by George R. Parkin at page 95.

(e) *Racial and Cultural Factors.*

Ethnological ties naturally exercise very great influence on the individuals and, to no less extent, on the life of nations in uniting them.* We shall take up these unifying factors one by one and investigate how far each has helped or hindered the growth of federalism.

(i) *The Racial Question*

The population of the thirteen colonies of America, about the year 1770, contained a very large proportion of Anglo-Saxons though other European nations were also represented. These colonists resented the supremacy of the British Parliament very much because they could not tolerate the autocracy of the people who were their own kith and kin but who did not allow the colonists the same privileges of government as they themselves enjoyed on the other side of the Atlantic. Yet the War of Independence left much of common feelings and sentiments between the two countries, and even upto this day, in all international affairs, the two Anglo-Saxon nations very often come together and exercise that wholesome influence which proceeds from union. If the racial similarity, in some measure

*The authors of the Federalist had attached the same importance to these factors and appealed for unity on the same grounds :

"With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their counsels, arms, and efforts, fighting side by side through a long and bloody war, have nobly established general liberty and independence." The Federalist, No. II.

separated the colonies from the mother-country for reasons which need not be detailed here, yet the same factor enabled the colonies to federate together in 1787, and to grow into the world's richest country and one of the most powerful nations.*

When Sir Henry Parkes was conducting his campaign in favour of the Australian federation he had appealed to the racial sentiments of the people. His words 'The crimson thread of kinship runs through us all' touched the hearts of the people and thence forward the movement for federation increased in volume and importance. These are two examples of federations having been formed between peoples of the same race and speaking the same language.

But what is particularly of importance to us here is not the similarity but the dissimilarity of races which has pointed to the necessity of a federal union. The history of federalism makes it abundantly clear that racial dissimilarity, in the presence of other common interests, has been found not impeding but accelerating the cause of federalism. Lord Durham had found the French and the English warring against each other in Canada. He wrote: "At the root of disorders of Lower Canada lies the conflict of the two races, which compose its population; until this is settled no good government is possible.†"

* "To all general purposes we have uniformly been one people; each individual citizen everywhere enjoying the same national rights, privileges and protection. As a nation we have made peace and war; as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made conventions with foreign states." *The Federalist*, No. II.

† Report, vol. II p. 72.

And he added: "Though I have mentioned the conduct and constitution of the Colonial government as modifying the character of the struggle, I have not attributed to political causes a state of things which would, I believe, under any political institutions, have resulted from the very composition of society."*

Writing of the attitude of the English towards the French he remarked: "It is not any where a virtue of the English race to look with complacency on any manner, customs or laws which appear strange to them; accustomed to form a high estimate of their own superiority, they take no pains to conceal from others their contempt and intolerance of their usages. They found the French Canadians filled with an equal amount of national pride; a sensitive, but inactive pride, which disposes that people not to resent insult, but rather to keep aloof from those who would keep them under. The French could not but feel the superiority of English enterprize; they could not shut their eyes to their success in every undertaking in which they came into contact, and to the constant superiority which they are acquiring. They looked upon their rivals with alarm, with jealousy, and finally with hatred. The English repaid them with scorn, which soon also assumed the same form of hatred. The French complained of the arrogance and injustice of the English; the English accused the French of the vices of a weak and conquered people, and charged them with perfidy. The entire mistrust which the two races have thus learned to conceive of each other's intentions induces them to put the most construction on the most innocent conduct; to judge every

* R  port, vol. II. p. 64.

word, every act and every intention unfairly ; to attribute the most odious design, and reject every overture of kindness and fairness, as covering secret designs of treachery and malignity.”*

Their mutual animosities and jealousies had made smooth administration impossible. The two races had separate schools, separate clubs and societies, and the members of the two never even dined at the same table.† The boys in the streets, while playing together, divided themselves into two parties which they named as English and French.‡ In their schools the French boys read text books which contained matter different in its effect and influence from that which the English boys read. Even the juries were perverted in dealing with the cases of criminals and their verdict always went in favour of the accused, if he belonged to their own race, even when the guilt against him was unmistakably proved.§ Perhaps worse racial antagonism—an antagonism which was sapping the very vitals of the nation and making political union impossible—can hardly be imagined. This enmity had checked the growth of population and seriously retarded the prosperity

* Ibid. p. 38.

† Ibid, p. 47. Also, “ Indeed the difference of manners in the two races renders a general social intercourse almost impossible.” Ibid. p. 43.

‡ In Montreal and Quebec there are English schools and French Schools, the children in them are accustomed to fight nation against nation, and the quarrels arise among boys in the streets usually exhibit into English on one side, and French on the other.” Ibid, p. 39.

§ Lord Durham further says: “ The course of justice is entirely obstructed by the same cause ; a just decision in any political case is not to be relied upon ; even the judicial bench is, in the opinion of both races, divided into two hostile sections of French and English, from neither of whom is justice expected by the mass of the hostile party.” Ibid. pp. 53-4.

of the country.* Even the genius of Lord Durham, in this confusion, could not find a solution of the problem except by anglicizing Canada. No doubt he was mistaken in this conclusion at least, but his mistake only shows that the height of antagonism was indeed very great.† He had proposed a legislative union of Lower Canada and Upper Canada. His view prevailed at that time, but the experiment failed and the French could not be coerced into forgetting their nationality. The ultimate solution was found in the application of federal principles which at once secured for the two races independence in all important local affairs. The Act of 1867 creating the Dominion of Canada has proved successful. It has demonstrated the utter futility of forming a homogeneous mass out of a heterogeneous mixture of races, but it has established beyond doubt that there are conditions of national existence in which federal union is stronger than even an unnaturally imposed perfect union.

Sir C. P. Lucas, in his Introduction to the Report, thus describes the effect of federal union upon the racial question: "How far race antagonism in Canada has been diminished since Lord Durham's time, and to what degree French and English have come closer to each other, it would be difficult to estimate with any approach to accuracy. French are French, and British are British, and will remain so till the end. On the other hand, modern life makes for greater courtesy

* In 1832 new comers numbered 52,000; in 1837 they were 22,000 and in 1838 only 5,000. Ibid, pp. 56-57.

† Lord Durham had charged the Government of that time with having done nothing to remove the evil of racial antagonism. He held that its policy had only aggravated the evil. Ibid. p. 63.

and forbearance as between peoples and races. French and English have lived side by side seventy more years since Lord Durham wrote, and have acquired habits and traditions of co-operation; and most important point of all—the Confederation of Canada by the British North America Act of 1867 has completely altered the position.”*

The history of Switzerland also tells the same tale. Here three races have successfully withstood all tests of national existence and the Confederacy is now one strong nation as strong in its administration as any other country where only one race forms the whole population. The latest example is afforded by the history of the Union of South Africa. Before the Union was formed there were three distinct races struggling in South Africa, the English, the Dutch, and the natives called ‘Kaffirs.’ The war for supremacy between the two European races, to some extent, showed the necessity of forming a union with the result that a federal form of government was established, which resembles a unitary government in several respects.† In Switzerland, too, there are three distinct races, namely, the French, the Germans and the Italians. The reasons and circumstances that led to the growth of federal government in this small country need not all be discussed;

* Introduction to Lord Durham’s Report, vol. I p. 284.

† Hitherto the existence of two conflicting ideals, the spirit of the Dutch Africanderism on the one hand and of British dominance on the other, has caused the current of national feeling to flow in separate channels. But since the war has eradicated this profound cause of conflict, the barrier between the channels has been thrown down and the last obstacle to the formation of a common patriotism removed. It is therefore no paradox to assert that out of war has come harmony.” R. H. Brand. ‘Union of South Africa,’ pp. 9-10.

here we only mean to observe that the problem of races in these countries could not have been solved consistent with the ideal of keeping the country one united whole, except by the application of federal principles.

There is another aspect of the racial question which needs some discussion here. That is the problem of native population which confronts people only in colonised territories. No such problem faced the Swiss, the Germans, or any other people in Europe. In the U. S. A. the Red Indians and the imported Negroes were and are still in quite large numbers, particularly in the Southern states. But in Australia the native population is dwindling before the civilising influence of the white settlers, and 'Australia for Whites' has now become an accepted principle. In South Africa the Kaffirs considerably outnumber the Europeans.* The influx of the Indian labourers in that country has further complicated the issue.† But the European, because of his greater ability and political supremacy has, for the present at

* Comparing the native question of U. S. A. and South Africa, Brand says: "No other nation is faced with a future so perilous. There are, it is true, twice as many Negroes in the Southern States as there are in South Africa, but in the United States as a whole the white population vastly outnumbers the black. The whites of the South have behind them the enormous white reservoir of the North. In South Africa there are five Kaffirs to every white man, and they are increasing fast." Ibid. p. 27. Also Ibid. pp. 28-29.

† The question of the Indian population has acquired greater importance since the controversy between Sir Tej Bahadur Sapru, the Indian delegate, and General Smuts, the South African delegate, at the Imperial Conference. While the resolution of reciprocity of treatment between the citizens of the British Empire had been accepted, South Africa has not yet recognised the equality of Indians in political rights.

least, thrown the question into insignificance. Lately the question of the rights and privileges of the Indian population has assumed considerable importance. The compromise arrived at as a result of the Habibullah deputation (1926-27) has made the solution of the problem easier. Yet the the future is full of difficulties and it will be an interesting achievement of modern politics to settle the question satisfactorily.

(ii) *The Influence of Language and Literature.*

No other question has offered greater difficulties in the formation of unions and federations than the diversity of languages *vis-a-vis* literature. It is only by correctly understanding and appreciating the views of others that we can at all arrive at unity of purpose, and as these views are expressed by speech or in writing the question of language acquires very great importance. No people will readily agree to give up their language and literature, nor it is physically possible and practicable to force a whole people into adopting an alien language as their own. Discussing the question of the language of a dependency being changed by the dominant country, Sir G.C. Lewis remarks: "But if it be inexpedient for the government to change suddenly the laws of a dependency it is still more inexpedient for the government to attempt to make a sudden change in its language.....The great mass of mankind never acquire a language by study; they only know the language which they imbibe during infancy and childhood. It is no more possible for a government, by the expression of its will, and by offering rewards or threatening punishments, to change suddenly the language of its subjects, than

to add a cubit to their stature or to give them a sixth sense"* There have been cases of conquerors forcing their own language upon the mass of the conquered country, but the results have been as disastrous as the attempts were foolish and short sighted. "Many examples might be given of the mischievous effects which have been produced by an attempt to force the language of a government upon the people. Thus when Joseph II attempted to treat Hungary as a dependency, to incorporate it with Austria, and to reform its laws by his own authority, the people for a time submitted, unwillingly, to his useful though hastily introduced reforms ; but when he ordered St. Stephen's crown to be carried to Vienna, and issued an edict making German the language of government throughout Hungary, the people rose in insurrection against him. In like manner, the measures of the King of Holland for introducing the use of the Dutch language into Belgium, in the place of the French language which was spoken by the educated classes, created a general discontent throughout Belgium, and contributed materially to produce the Belgian revolution, and the consequent separation of Belgium from Holland."†

Differences in languages have exercised great influences upon the history of nations. Lord Durham, in his report on Canada, discussing the subject of languages observed : "The difference of language produces misconceptions yet more fatal even than those which it occasions with respect to opinions, it aggravates the national animosities by representing all the events of the day in utterly different lights. The political misrepresentation

*"Government of Dependencies." pp. 267-268.

† Ibid. p. 268.

of facts is one of the incidents of a free press in every free country ; but in nations in which all speak the same language, those who receive a misrepresentation from one side, have generally some means of learning the truth from the other. In Lower Canada, however, where the French and English papers represent adverse opinions, and where no large portion of community can read both languages with ease, those who receive the misrepresentation are rarely able to avail themselves of the means of correction. It is difficult to conceive the perversity with which representations are habitually made, and the gross delusions which find currency among the people; they thus live in a world of misconceptions in which each party is set against the other not only by diversity of feelings and opinions, but by an actual belief in an utterly different set of facts."*

Many are the complications which the diversity of languages introduces into the political problem of communities. But most of these are solved by the application of federal principles. Though United States of America and Australia had no language difficulty to solve, the statesmen of Canada, Switzerland and South Africa were considerably handicapped in their attempts to tide over the problem of multiplicity of languages. A unitary constitution where the necessity of one legislature and one medium of speech is apparent was hardly suitable. The only alternative lay in the recognition of all the important languages and putting them all on one level as far as the administration was concerned. After the passing of the Act of 1791, in Canada both the languages

* Report, vol. II, pp. 40-41.

English and French were in use in the Legislature at Quebec.* The practice created considerable administrative difficulty. Lord Dalhousie had expressed his views in a confidential dispatch, November 21, 1823, in which he wrote: "At present the use of two languages indiscriminately, in the Legislature and in the Court of Justice, creates an extraordinary and absurd confusion, leads to immense additional labour and expense, and nourishes prejudice and separation of feelings between the two classes of the people."† Lord Durham's views, were equally emphatic as to the evil effects of multiplicity of languages which had eclipsed the prosperity of Canada at the time. He clearly showed how this diversity in language and literature had checked the growth of mutual sympathies between the English and the French. Lord Durham has described the condition of Canada in these significant words: "As they are taught apart, so are their studies different. The literature with which each is the most conversant, is that of the peculiar language of each; and the ideas which men derive from books, come to each of them from perfectly different sources. The difference of language in this respect produces effects quite apart from those which it has on the mere intercourse of the two races. Those who have reflected on the powerful influence of language on thought, will perceive in how different

* "The use of both languages was accepted as a matter of course from the beginning of the constitutional change without any formal resolution by either house, and this applied also to bills introduced." Brymner's Report on Canadian Archives for 1791, Introduction, p. XXIX.

† Quoted by Sir C. P. Lucas in Durham's Report, vol. II, p. 40, footnote.

‡ Quoted. Ibid. p. 40, foot-note.

a manner people who speak in different languages are apt to think; and those who are familiar with the literature of France know that the same opinion will be expressed by an English and French writer of the present day, not merely in different words, but in a style so different as to mark utterly different habits of thought. This difference is very striking in Lower Canada, it exists not merely in the books of most influence and repute, which are of course those of the great writers of France and England, and by which the minds of the respective races are formed, but it is observable in the writings which now issue from the Colonial press. The articles in the newspapers of each race, are written in a style as widely different as those of France and England at present; and the arguments which convince the one are calculated to appear utterly unintelligible to the other.* Some persons held that only English should be recognised as the official language and efforts should be made to make it the *lingua franca*, but, impracticable as their proposal was, their efforts did not materialise.† Article XII of the Act of 1840, while allowing translation into French, recognised English alone as the official language to be used in the debates and proceedings of the legislature of Canada. But Lord Elgin got this Article amended in 1848 and the French were allowed to use their own language. The British North America Act of 1867

* Report, Vol. II pp. 39-40.

So powerful was the influence of the two sets of literature that not even a close neighbourhood lasting over three quarters of a century could remove the differences.

† In February 1789, Mr. Finlay, Post Master General of Canada, had made one such suggestion. Durham's Report, Voll. II, p. 40, foot-note by Lucas.

also finally recognised both the languages and settled the question once for all.*

In the pre-War Austro-Hungarian Empire the question of languages was not an unimportant one. The Austrians would not allow any other language but German, nor the Magyars of Hungary any but Magyar. Even for purposes of joint administration the two delegations met separately for all purposes except when a joint session was held in which case there was only voting but no debate. This unsatisfactory arrangement did not contribute to the growth of sympathies so very necessary to the success of a confederation. The ultimate result was the break up of the Empire after the War.

In Switzerland also there was the same difficulty of finding a common language, but it was overcome by the recognition of all the three languages as equal, thus respecting the susceptibilities of the three races. The Canton where a particular language predominates conducts its administration through that language. This arrangement is possible only under a federal form of Government.

The Dutch of South Africa are as much in favour of retaining their own language as the English theirs. They established union but the equality of the two languages had to be recognised and one section of the Act of Union expressly did it.†

* Section 133 of the Act runs: "Either the English or the French Language may be used by any Person in the Debates of Houses of Parliament of Canada and of the House of the Legislature of Quebec.....The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages."

† Article 137 of the Constitution of South Africa lays

We now see that the states where the language problem was absent easily federated together, yet it must be admitted that even the complex problem of the variety of languages has been successfully solved by the application of the principles of federal government. This dissimilarity in languages is no obstacle to federation. On the contrary, it is an argument in favour of federalism which clearly aims at recognising differences and adjusting them on the basis of equality for all by enabling each province to adopt the language of the majority in its administration. Similarity of languages may hasten a nation's march towards a unitary form of government but dissimilarity points to the necessity of establishing a federal government. Where all people cannot be expected to adopt one language as their own the only solution lies in recognition of the equality of all the languages in use and permitting their employment in local administration as much as is compatible with the well-being of the people.

(iii) *The Problem of Religion.*

The problem of religion offers great difficulties in the unification of the various parts of a country divided on religious basis. If of two states one follows one religion and another a different religion, a unitary government seems unworkable. True, in modern days religion has ceased to excite as much interest as it did in days of old and modern history is free from the bloodshed of crusades and religious wars. Modern states are down: "Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges."

not formed on religious grounds, and generally they keep politics free from religious encumbrances, yet the religious interest is by no means extinct. The recent examples of Switzerland and Ireland are sufficient to confirm this truth. Protestant Ulster opposed the demand of Catholic Southern Ireland to cut off the country's connection with the British. England has a reputation for her religious toleration and the people in this country have creditably succeeded in keeping politics separate from religion. But even here the recent controversy over the acceptance of the revised Prayer Book created no little heart-burning and divided the political parties into two groups based clearly on religious grounds, so much so that while the Premier earnestly appealed to the House for acceptance of the revised Book, his Lieutenant, the Home Secretary, strongly opposed him and the party whips had to be withdrawn to allow free voting on this question. In Italy Mussolini has only very recently succeeded in settling the quarrel between the Government of Italy and the Vatican, which had, for a long time, been engaging the attention of Italian statesmen and attracting the eyes of the Catholic world.

In Canada there had been religious differences no doubt, but happily they had not accentuated political controversies. Lord Durham observed in his Report, "It is a subject of very just congratulation, that religious differences have hardly operated as an additional cause of dissension in Lower Canada; and that a degree of practical toleration, known in very few communities, has existed in this Colony from the period of the

conquest down to the present time."* But in Switzerland no such toleration existed nor the religious differences, so acute in the country, followed any boundaries.† The spread of Protestantism in the sixteenth century created religious differences of no small dimensions. The year 1531 saw the out-break of a Civil War between the Protestant cantons on one side and the Catholic cantons on the other.‡ In 1712 there was a second religious war. In the year 1845 the religious question reached its climax and an armed rising, which also sought to weaken the powers of the central government, took place and resulted in the defeat of the Catholic party. But the subsequent changes and amendments in the constitution led to reconciling the Catholics who were opposed to the liberal movement of the nineteenth century. Greater autonomy for the cantonal governments satisfied them and since then there has been no great religious trouble in that country.

Federalism, by recognising the religious differences and granting a little more power to the provincial governments or by some such device, can solve the religious problem successfully as it has solved most problems. But it must be remembered that this is applicable only to the case of a country in which different religious communities form predominant majorities in different parts and these parts are divisible into separate administrative units. On the other hand, where people professing many religions are

* Report, Vol. II, p. 137.

† Brooks, 'Government and Politics of Switzerland,' pp. 33-34.

‡ Ibid. pp. 43-44.

scattered all over the country and it is physically impossible to carve out provinces in each of which a particular religion predominates, federalism cannot offer a solution of the constitutional problem. No doubt, in this modern age religion is not creating very many troubles in politics, but as long as man believes in God and a particular mode of worship, religious differences are sure to exist in society. It is for this reason that all modern constitutions begin with the fundamental recognition of freedom of conscience and the State does not patronise any particular religion, for all constitution makers know that once the fire of religious animosities is let loose there is no end to it. It seems most unlikely that even the spread of socialism would obliterate these religious differences, particularly in Asia which has been the cradle of World's religions. And federalism is better able to effect religious reconciliation than a unitary Government.

(f) *Colonial Policy.*

The colonial policy of the dominant country has also, though in an indirect way, helped the growth of federalism, in different colonies. A mother country always formed separate colonies even in the same country and treated them as separate units of administration. This resulted in the growing up of states lying near each other, semi-independent *vis-a-vis* the mother country, but independent of each other. And very often the treatment of these colonies by the mother country resulted in uniting them against herself. The thirteen colonies that lay scattered along the eastern coast of North America would not have set the first example of a truly federal union, at

least so early as they did, if England's colonial policy, during the latter half of the eighteenth century, had been determined by the wiser counsellors of George III. It was the encroachment upon their freedom from taxation* by England that goaded the colonies into presenting a united front to the policy of English statesmen, and later on formed them into the United States of America. In their Declaration of Independence the colonists laid great stress upon the policy of George III, which they resented most and which, as they declared, had compelled them to sever their connection with the mother country and united them into the first federation of modern days. The Declaration charged the King with the commission of some and the omission of other acts whereby, in their opinion, as they then said, "He

* Dealing with the subject of colonial policy Bryan Edwards writes :—

"The leading principle of colonisation in all the maritime states Europe (Great Britain among the rest) was commercial monopoly. The word monopoly in this case admitted a very extensive interpretation. It comprehended the monopoly of supply, the monopoly of colonial produce, and the monopoly of manufacture. By the first, the colonists were prohibited from resorting to foreign markets for the supply of their wants; by the second, they were compelled to bring their chief staple commodities to the mother country alone; and by the third, to bring them to her in a raw or unmanufactured state, that her own manufacturers might secure to themselves all the advantages arising from their further improvement. This latter principle was carried so far as to induce the late Earl of Chatham to declare in Parliament, that the British colonists in America had no right to manufacture even a nail for a horse shoe."

'History of the East Indies,' Vo. II. p. 565, and also p. 443.

Sir George Cornwall Lewis, in his 'Essay on the Government of Dependencies' has also expressed similar views, vide his book pages 214 215.

has abdicated government here, by declaring us out of his protection and waging war against us. He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people." These and similar other grave charges contained in the Declaration were undoubtedly not so true as they were represented to be, nevertheless they clearly show that the policy of the Colonial Office in London was far from being wise and far-sighted.

Lord Durham had severely criticised the policy of the Colonial Office with regard to the British colonies in North America, and he had boldly suggested that the remedy to cure the ills of Canada lay in the transference of responsibility of administration from the hands of the Colonial Secretary of State, living thousands of miles away from the scene, to the natural leaders of the people.* The persistence with which the Assembly of Lower Canada threw out the Civil List and created complete deadlock in the administration demonstrated in unmistakable terms the Canadians' disapproval of the Colonial Policy of Britain. And though Durham had

* Sir C. P. Lucas, in his Introduction to Lewis' 'Government of Dependencies,' thus expresses himself regarding Durham's report: "Lord Durham's celebrated mission to Canada in the year 1838 and the report he issued upon his return in 1839 was the beginning of a new era in the colonial policy of Great Britain. It led to the grant of self-government in its widest sense to the large colonies, and it sowed the seeds of the confederation. Its immediate result was the Union of the two provinces of Upper and Lower Canada in 1840-1 under responsible government, and it bore full fruit, when in 1867, these two provinces, since known as Ontario and Quebec, were with Nova Scotia and New Brunswick formed into the Canadian Dominion."

Introduction, p. XXVII.

proposed Anglifying of Canada and the establishment of legislative union between the Upper and Lower Provinces—another mistaken view of the Canadian problem—the question was satisfactorily solved only by the formation of a federation of the several colonies.

It is clear, therefore, that the policy of the mother country whether leading to the oppression of the people of the colonies or to the neglect of the true state of affairs, has invariably resulted either in a complete separation of the colonies from her or by her granting responsible government to them, but in each case resulting in the formation of a federation. The mistaken British Colonial Policy of the eighteenth century had opened the eyes of the British statesmen of the nineteenth century, and thanks to the outspokenness of Lord Durham, the fatal mistakes of six decades ago had not been repeated in the case of Canada. He wrote in his report: "If in the hidden decrees of that wisdom by which this world is ruled, it is written that these countries are not for ever to remain portions of the Empire, we owe it to our honour to take good care, when they separate from us, they should not be the only countries on the American Continent in which the Anglo-Saxon race shall be found unfit to govern itself."*

Commenting upon this brilliant exposition of Britain's future treatment of the colonial question, Sir C. P. Lucas remarked: "These words apply beyond Canada and beyond America. The spirit of them transcends the sphere of settlement, it is the living force of the whole British Empire.

* Report. Vol. II, p. 310.

The words are the message of a great Englishman to his fellow countrymen, that the one thing needful is to leave behind a legacy of what is permanently sound and great. If England continues to be inspired by what Lord Durham taught so well, then as Great Britain has grown into Greater Britain, so Greater Britain will grow into Greatest Britain, to the glory of God the Creator, and to the well-being of mankind."†

And he paid glowing tribute to Lord Durham in these words: "To all times and to all sort and conditions of men he has preached the doctrine, that for peoples, as for individuals, the one thing worth living for is to make, not to destroy; to build up, not to pull down; to unite small disjoined elements into a single whole; to reject absolutely and always the doctrine *Divide et Impera*, because it is a sign of weakness, not of strength; to be strong and fear not; to speak unto the people of the earth that they go forward."‡

2. The Nature of a Federal Government.

We have seen how in the medley of political controversies and the confusion of political convulsions the solution has been found in the application of the principles of federalism. Where political issues have been complicated by the existence of multilateral disputes, racial, linguistic, religious, economic, and commercial, federalism has proved an efficacious panacea which has cured many a political ill. Where all other political devices have proved abortive federalism has set at rest all troubles that seemed to endanger the very existence of society. And the

† Lucas' Introduction to the Report, Vol. I, pp. 316-317.

‡ Ibid. p. 316.

extent of the success of the remedy has been in direct proportion to the number and seriousness of the complications. Federalism may, therefore, be fitly defined, in the language of higher mathematics, as a complex function of several variables. And it is for this reason that attempts on the part of one country to copy in toto the principles of federalism adopted by another country have seldom, if ever, succeeded. Political societies, like individuals, differ in their temperaments and environments and by a slight change, to continue the mathematical metaphor, in the value of one variable the ultimate value of the whole function has been found consistent with the solution desirable. But it should never be understood that federalism is the best political device for all countries and for all times. What is here contemplated is to indicate the very great extent to which, where other forms of polity have failed, federalism has come to the rescue.

Yet the charge brought against federalism is that it is a weak form of government. The critics hold that federalism, from its very nature a compromise between several contending parties, does not lend strength to government. Brand, in his apologia for a unitary form of government, has levelled this charge of weakness against federalism rather strongly.* He has admired the African statesmen for adopting a unitary constitution in preference to a federal one—he

* "But federalism is, after all, a pis aller, a concession to human weakness." 'The Union of South Africa,' p. 46.

"Federalism must be accepted where nothing better can be got, but its disadvantages are patent. It means division of power and consequent irritation and weakness in the organs of government, and it tends to stereotype and limit the development of a new country." Ibid. pp. 46-47.

considers that constitution to be of unitary type. But in the same breath he has struck a different tune and paid tribute to them for having compromised.†

We shall discuss here if and how far this charge of weakness is true. If by weakness is meant that a federal constitution is incapable of lasting long or that it cannot allow proper national sentiment to grow then the histories of the United States of America and Switzerland are a sufficient refutation. To-day the U. S. A. is the richest and one of the most powerful nations in the world. Her advice is anxiously sought for in all international affairs of the first magnitude. All European powers consider it a privilege to be on friendly terms with her. Her arms have brought her crowning victories in all foreign wars no less than in domestic disputes. She has successfully defended the Monroe Doctrine in the New World against the clamour of world's greatest powers. Her admission to the League of Nations which, as all nations think, is bound to enhance the reputation of the League, is anxiously sought for. Though she is still out of the League, all the international

† "No opposition in Transvaal leaders impressed upon their followers the fact that the document was the result of compromises by all parties. It was thus a delicately balanced equipoise and no alteration could be made without risk of total collapse." "The Union of South Africa," p 36.

"Compromise is again written large over the provision surely a strange one that....." Ibid. p. 52.

"Compromise was necessary, and in the art of compromising Afrianders are past-masters." Ibid. p. 61.

"South African union is in itself a great step forward in the direction of imperial consolidation. It simplifies at once all imperial problems and particularly that of defence, which for the safety of the empire and its component parts must be grappled with at once." Ibid. p. 30.

disputes are solved in consonance with her designs and views. She has called the various conferences for world's peace. It was her admission into the War which settled the fate of Europe. Her constitution is working satisfactorily.

Again no single colony of British North America or Australia ever commanded that respect in Imperial affairs as the Dominion of Canada or the Commonwealth of Australia does now. No one state of the old German Empire or the present German Republic was strong enough to win for Germany one of the first places among world's greatest powers till the federal ties made it possible.

Prejudice apart, federalism has created unity where none was possible under any other form of government. By bringing closer together several smaller states it has created powerful nations, and by putting down mutual jealousies and interstatal disputes it has brought those blessings without which world's peace was in constant danger of being disturbed. It would not be incorrect to say that federalism has proved a strong solvent which has dissolved all those hard substances which were incapable of being thrown out in any other wise, and has thus contributed largely to the problem of world's peace by creating smaller leagues and reducing the chances of mutual friction and interstatal wars.

But the question is: Is compromise essentially a weak tie? A little reflection will give the answer, 'No.' Even in countries enjoying unitary forms of government there are statesmen and political parties—and the system of party government is extending day by day—who hold divergent and sometimes diametrically opposite views.

When legislation is on the anvil of discussion the party in power tries to satisfy the opposition by making the measure less unacceptable and less offensive, by accepting certain amendments moved by the opposition. This creates a larger number of people who accept the legislation and abide by it peacefully which they would not have probably done without those amendments. This is all compromise and it certainly imparts strength to the administration. Our every day actions depend largely upon compromise and we find it the best way to win popular support. In fact we cannot do away with compromise, and if it is an evil it is a very necessary evil. It will not require much effort to realise that compromise imparts strength and obstinacy weakness to a government.

But there have been cases, like those of the leagues of the medieval period and the pre-War Austro-Hungarian Empire, which proved failures owing to weaknesses. The reason of these failures has, invariably been the absence of the material and environments favourable to the application of federal principles. The palm will not grow on the Himalayas, the banana will not sprout in the deserts of Arabia, the lion will not find Sahara a habitable place, nor the kangaroo will live long in Kashmir, so will federalism not thrive in a country where the need for it is not manifest nor the circumstances favourable. Statesmen and politicians like the Botanist, the Horticulturist, and the Zoologist have failed to grow federalism in a country unsuitable to its growth. Evidently there are limitations to the success of all forms of polity including the federal type, but limitations are by no means,

at least they ought not to be so interpreted, the sources of weakness.

The tendency has of late been to outlaw war, to create international sympathies and thus to bestow the blessings of peace on the world. This has been and is being done by enlarging the sphere of national and international activities. The latest device to achieve this end is the establishment of the League of Nations which has, having regard to its infancy and limitations, proved successful and, therefore, powerful in settling disputes. In this sphere federalism has decidedly been the precursor of the League and federalists the ambassadors of peace.

Discussing the comparative merits and demerits of federalism Prof. Dicey says, "Federalism, lastly, creates divided allegiance. This is the most serious and the most inevitable of the weaknesses attaching to a form of government under which loyalty to a citizen's native state may conflict with his loyalty to the whole federated nation."* He has cited the two cases of the Swiss Sonderbund and the American Secession.† But the same can with equal force be said of quelling any internal disturbance in which a soldier is asked to open fire on the leader of a movement which may have the soldier's own sympathy. Was not the same problem present before the executioner of Charles I? Do not soldiers have to kill their own relatives and sometimes their near and dear ones? In all cases of civil wars similar problems confront people even in all unitary governments. Just as we have sometimes to sacrifice our personal interests to

* 'Law of the Constitution.' Introduction, p. LXXVIII.

† Ibid. p. L. XXIX

globe. This result could not have been achieved under a unitary government. To call federalism—the very source of union, compromise and interstatal peace—as a weak polity will be a contradiction in terms. For it has imparted vigour where weakness prevailed, bestowed peace where jealousies and suspicions were making political air foul, and created prosperous big states where smaller and weaker states were fighting for their very existence. No doubt unitary government is, by its very nature, more lasting and better organised, still where it is impracticable necessity points to the federal type which, though it may not be the best solution by itself, is undoubtedly the second best and most certainly the best for a certain set of circumstances.

It is for this reason that we see federations multiplying day by day in every continent. Australia and almost the whole of North America have adopted federalism. Latin America is rapidly moving in that direction. South Africa already resembles a federation and East Africa may become one. In Europe Switzerland and Germany are federations while Soviet Russia may be called one at least in a loose sense of the word, while the prophecy of Bryce, “there is reason to think that within the next century some of the smaller states will have disappeared from the map of Europe,”* still stands there. In Asia, too, India is most likely to become world’s biggest federation in the near future and China may have to do the same. We may, therefore, safely agree with what Sidgwick said: “When we turn our gaze from the past to the future, an extension of

* ‘Constitutions.’ p. 139.

federalism seems to me the most probable of the political prophecies relative to the form of Government." †

† H. Sidgwick. 'The Development of European Polity,'
p. 489.

CHAPTER III

DISTRIBUTION OF POWERS

Introductory.

It has been pointed out in Chapter I that one of the characteristics of federalism is the co-existence of two governments, each with its own specified sphere of administration. This necessarily involves the distribution of powers between these two governments—the central or federal government and the state governments. This division of powers is, indeed, the very essential condition of a federal government whose formation is based upon this and this principle alone. For if any one of these governments be entirely vested with all the political authority there is at once established a unitary form of government and the necessity of a federal government is ruled out. And this division of powers—without involving a corresponding division of sovereignty which remains undivided in the people of the federation as a whole—sets limitations to the extent of jurisdiction of each government and prohibits the one to make encroachments upon the powers of the other.*

* "The distribution of powers is an essential feature of federalism. The object for which a federal state is formed involves a division of authority between the national government and the separate States. The powers given to the nation form in effect so many limitations upon the authority of the separate States, and as it is not intended that the central

This division of powers is essentially different from the separation of powers in any government—the division of Legislative, Executive and Judicial functions—although this latter division is also essential in a federal government for more solid reasons than in a unitary government. We shall discuss both these divisions in this chapter in so far as they relate to the fundamental principles of federalism.

1. Division of Powers between Federal and State Governments.

What is the basis of the division of powers between the federal government and the state governments in a federation? What are the principles which determine this division? And lastly, what is the extent to which this division is carried out? These are the questions which suggest themselves at the very outset of our enquiry into this subject.

As we have indicated in the first chapter there are two forces which tend towards the formation of federations—the centripetal force and the centrifugal force. It is only when either (1) a number of smaller and independent states living side by side, or (ii) a big state extending over a wide area, find it difficult to carry on the governmental machinery, smoothly, effectively and efficiently, that the necessity of establishing a federation becomes manifest. So that the ways in which federations are formed are (a) the centralising of certain specified powers by the smaller states into the hands of the newly formed central government should have the opportunity of encroaching upon the rights retained by the States, its sphere of action necessarily becomes the object of rigorous definition.”

Dicey. ‘Law of the Constitution,’ p. 147.

or federal government, and (b) the decentralising of some powers, in a big state, by the state itself into the hands of the several governments set up over the many states or provinces into which that big state may be parcelled out. This is, in short, the basis of the division of powers in a federation.

And as the basis of the division of powers is of a dual character so are the principles which guide this division. When the states are compelled to create a central government over and above themselves they often take good care to assign powers to the new government within specified limits only. Such was the case in the pre-war Austro-Hungarian or the German Empire, the Confederacy of the United States of America, and also the Commonwealth of Australia. But in cases where the decentralising force creates a federation the states are not allowed great powers as was the case in Canada when the federal dominion was formed in 1867. But this should not be construed as a hard and fast rule, for in the case of the Union of South Africa the several colonies, for the time being, disregarded their independent existence and set up an authority over themselves, having so large powers as to leave to the states practically no semblance of independence. Thus in a federation there may be one of the two cases, *viz.* either the central government may possess greater powers than the provincial or state governments or the *vice versa*. To decide this distribution of powers either the powers of one authority may be defined leaving the undefined and unenumerated powers to be exercised by the other authority, or there may be enumeration of the powers assigned to each. But in politics there can be no rigid walls interposed

between the powers of two authorities and, in fact, questions frequently arise about the power which it is very difficult to assign to one authority without a protest from the other. This difficulty is met with in one of two ways, *viz.* either the constitution reserves the residuary powers to be exercised by one of the authorities clearly mentioned, or it empowers both the governments to exercise co-ordinate authority in those matters. In the latter case, whenever conflicts arise due to simultaneous exercise of authority by federal as well as the state governments the orders of one of them, more often those of the federal, are given priority over those of the other. And this fact is also specifically indicated in the constitution.

All this goes to show that the division of powers between the federal government and the various state governments in a federation is dictated by the special circumstances of the country. But the broad fact remains that naturally those powers are assigned to the state governments, which vitally affect the life of the inhabitants and allow development of the country in accordance with the local conditions of the states, while matters concerning the country as a whole are assigned to the central government. But an apparently similar sort of division also takes place in all unitary governments in which are set up what are called local or municipal governments vested with the exercise of powers vitally affecting the daily life of the people. How and in what manner, therefore, are these divisions of powers between the federal and state governments in a federation on the one hand, and between the central government and local or municipal authorities in all forms of governments

on the other, to be distinguished and differentiated from each other? Does the division follow the same lines, and does it set up similar authorities in the two cases? If not, where does the chief difference lie? These questions may be answered briefly. The division of powers in these two cases is fundamentally different, and the two authorities in the one case are absolutely dissimilar from those set up in the other case. In a federation both the federal government and the state governments derive their authority from the people and the fundamental constitution, and are absolutely independent of each other, neither of them being legally authorised within the meaning and purpose of the constitution to encroach upon the authority of the other or to destroy it by its force. But each is supreme within the sphere allotted to it.* While in the other case the central government, in order to decentralise its activity and to provide for a more efficient administration, sets up by its own authority and without the interference of any outside body local functionaries or municipalities within the country and these are entirely dependent for their existence and extent of authority upon the will of the former. Again the orders and laws of a provincial or state government in a federation have the full force of laws irrevocable by the central government, so long as they are confined within the limits assigned by the constitution, and, therefore, the state government is supreme within its own sphere of authority. But the orders of a local or municipal government are in the nature of by-laws depending for their validity upon not only the charter or act under

*G.B. Adams. 'The British Empire and a League of Peace etc.', p. 75.

which it is established but also upon the sanction of the central government, in as much as these orders may be entirely suspended or partially amended by the latter which can even wipe off its existence by withdrawing the charter or the act establishing that authority, without committing any illegal or unconstitutional action. Clearly, therefore, the powers of a state government, in a federation are very much wider than those of a local or municipal authority in a unitary government and are as much binding upon the citizens as those of the federal government. To take an example, the charter establishing a municipality or county council in England may be entirely withdrawn or that subordinate authority may be suspended for such time as is seen proper by Parliament without in any way infringing the constitution; but the authority of the government of New South Wales in Australia cannot be curtailed or interfered with by the government at Canberra, without infringing the Constitution of the Commonwealth of Australia, which infringement will be invalid and unconstitutional and the aggrieved government will have every right to get amends for the injury done.

Having stated the principles as well as the nature of the division of powers between the federal government and the state governments in a federation, we now propose to indicate the extent of this delimitation of powers.

(a) *Powers of the Federal Government in a Federation.*

There are certain functions of government which, in a federation, are and ought to be exclusively within the powers of the federal

government. Such functions, by their very nature, cover the entire territory of the federation and apply equally to all the member states or provinces, or are such as can be better administered by the common authority than by the separate states. The first and foremost of these is foreign affairs. In all international affairs the federation appears as one and not as so many individual states, hence the federal government acts on behalf of the whole federation. To allow the different states an independent voice in foreign affairs will surely cut at the root of national unity and will thwart the very purposes for which federalism is applied to solve the problem of the country. History affords no example of any confederacy or federation in which foreign affairs were left to the care of the different member states. Even in the loose confederacy, the pre-war Austro-Hungarian Empire, foreign affairs were one of the three subjects of common administration. And at present even the British Empire is one unit in international affairs. True, there are cases wherein a federal government has allowed the individual states to enter into commercial treaties with their neighbouring states, but such treaties were not to prejudice the interests of other states of the union, nor were they to be concluded without the sanction of the federal government. Closely connected with this is the question of the control of the land, naval and air forces. The power of controlling the military forces of the union must of necessity belong to the federal government. It is this control, which, in reality, enables the federal government to appear as a strong entity in foreign affairs or which keeps the existence of the union safe. No

federal government can take the responsibility of dealing with foreign powers without the strength to enforce its will, nor can it entrust control over these forces to the individual provinces without jeopardising its own safety. What would have been the result if each state of U. S. A. had control over its forces before the War of Secession? Or what again would have been the subsequent history of Swiss confederacy if before the Sonderbund each canton had its own independent army? The dangers of allowing separate military camps, for so they would really appear, to exist within a confederation or union can better be imagined than described. Could the central government exercise its authority over the states without having any strength behind it? In Australia the Federal Council established in 1885 had no executive power to raise and keep any army and it was this weakness in the composition of that body because of which it failed to give the Australians necessary protection against the fear of foreign aggression. In all medieval and modern confederacies and federations these two subjects, foreign affairs and army with its various branches, have been placed within the jurisdiction of the federal government.* Not to do so would have been like the erection of an engine minus the driving force or energy, with the inevitable result that it would have been worse than useless.

*Foreign affairs, include also the appointment of ambassadors at foreign courts and receiving of foreign ambassadors, the declaration of war and the making of peace.

In the German Empire some of the bigger states had control over their own militia but they had also to observe uniformity of training and had to place their soldiers at the disposal of the Empire in case of necessity. This was possible in a confederation in which the members were princes

Next in point of importance is the question of those services which embrace the whole country and not only bring considerable revenue into the central exchequer but also enable the federal government to make its authority felt by all citizens. These are the postal, telegraph and telephone services which are wisely assigned to the control of the federal authority. To entrust these to the individual provinces would mean unnecessary multiplication of authorities, creation of inconvenient diversities and increase of the chances of friction. No federation has, therefore, assigned these to provincial or state governments. Closely connected and of equal importance is the commercial question which includes the means of transport and communications. It has been pointed out in a preceding chapter how financial gain by creating opportunities for bigger markets, uniform trade laws, uniform coinage, weights and measures has helped neighbouring states to unite together. The makers of all modern federations were alive to the increasing commercial advantages which were to accrue to them from the union. For this reason in all federal constitutions we find these subjects assigned to the federal government. As a necessary corollary, banking, and bankruptcy and insolvency laws are the subjects of federal administration. Similar is the question of all means of transport, the commercial veins and arteries of the country, railways,

unwilling to lose the semblance of their royalty, but the actual working was not very much in conflict with the ideal of union between the several states.

Also in the United States of America each state has its local militia to be put at the disposal of the Federal Government when necessary.

mercantile marine and trunk roads. To entrust their control to the federal government is essential to the speedy development of interstatal commerce. For the same reason foreign trade and fisheries, except near the coast, are better administered by the federal authority for the whole country than by the various provinces severally. A big state is always in a better position to secure best commercial advantages by entering into commercial treaties and fiscal arrangements with foreign nations than a small state. Analogous to these questions are patents, copyrights and designs. A central authority is better placed to safeguard the interests of authors, inventors and discoverers, and therefore these subjects are placed in its hands.

No less important is the composition of population *vis-a-vis* the society of the whole federation. To legislate for naturalisation and also to take care of aliens is one of the most important duties of a government. Therefore these subjects are generally assigned to be exercised by the federal government, which establishes uniformity within the whole of its territory. In the United States of America, Abraham Lincoln had to declare war against the Southern States to emancipate the slave population.* Therefore it is very necessary that this question be transferred to the jurisdiction of the federal government. Before the establishment of the South African Union the various colonies dealt with the native and foreign populations in the manner they liked with the result that there were serious differences in the

* But this is a special case of the people in power denying equal rights to those of their fellow men who were weak.

policies pursued by the various colonial governments in the treatment of the non-white population. This created a very unhappy situation, particularly in the treatment of the Asiatics. But since the colonies united the basic principle of the policy regarding the native or non-white population is determined by the Governor-General in Council. Religion, too, comes within the region of federal jurisdiction and in this connection the War of the Sonderbund is a great eye-opener to all those who might be interested in the making or studying of federal constitutions. It is the federal government alone which is most competent to establish religious toleration or equality and thus help the growth of peaceful community. But all countries do not have the same complications of the composition of society and populations and this is why there can be no general principles to determine the way in which this question can be solved.

To discharge its duties every government requires large sources of income, the power to impose taxation, and also to borrow money on the credit of the country. This, in a federation, necessitates the assigning of necessary powers to federal government, including the control over the property of the country, control of the public debt and the establishment of banks and mints.

These are, in short, some of the powers that are given to the federal government in a federation. All modern federations, U. S. A., Switzerland, Australia, Canada and the German Republic have generally assigned them to the federal government. But the list is neither exhaustive nor it could be made so. No two countries are similar in their internal problems much less so

federations in which the problem is always hydra headed. Consequently no rules can possibly be prescribed to guide the distribution of powers between the federal government and the state governments. The history, environments, and conditions of different countries essentially differ; moreover, the development of science followed by new discoveries and inventions is bringing new problems to light. This further complicates the task of laying down specific lines of division between the authorities of the two kinds of governments. We can at best enunciate certain general principles which may be taken as a guide to tackle this problem. It may be mentioned here that the greatest controversy between the federal government and the state governments arises over this question of the distribution of powers between them.

The case of the Union of South Africa is quite different from that of other federations. Here almost all governmental powers are reserved to the Union Government and very little is left to the provincial governments to do in the sphere of administration. Article 59 of the Constitution clearly lays down: "Parliament shall have full power to make laws for the peace, order, and good government of the Union." The Governor-General of the Union has full powers to veto the measures passed by the provincial legislatures. He also appoints the provincial heads who are called administrators.

The German Republic is the most recent example of a true federation formed after the War. Its constitution is very novel in several respects. The authors have introduced a peculiar device to control labour and commerce by the

federal government. It has (i) sole legislative power over some subjects enumerated in Article 6, (ii) it also legislates for some other matters defined in Article 7, and (iii) it may also draw up regulations for many more subjects included in Articles 10 and 11. But, except in case of subjects defined in Article 6, the state governments, when the federal government is not exercising its authority, generally legislate. So that the Germans have given very considerable legislative powers to the federal government without, of course, giving equal executive powers which are confined necessarily to the subjects over which it has sole legislative authority.

(a) *Powers of State Governments.*

Every country has its central government armed with full powers to maintain its entity both as regards its internal as well as its external sovereignty. But for the sake of practical administration some powers have to be delegated or decentralised to local or provincial bodies. In a unitary government these powers are merely delegated but in the case of a federation they are irrevocably assigned to state or provincial governments. It is here that a federal constitution essentially differs from a unitary one. It is this feature which makes the federal constitution unique in its nature as well as operation. In a federation the citizen of a state or province is more intimately concerned with the administration of his state government than with the federal government, because the powers of the former, from their very nature, affect his daily life more closely than those of the latter. He is, therefore, naturally anxious, moved as he is by the senti-

ments of his warm state patriotism, to get as much power for his state as he possibly can. But in this desire he is bound by the process in which the federal tie is brought to bear upon the assigning of the powers between the federal government and the state government.

In certain cases the provinces or states enjoy the very limited powers which are definitely assigned to them by the constitution, all others being reserved to the federal government. In other cases the provinces enjoy very large powers which the constitution reserves to them after assigning some definitely specified ones to the federal authority. In the former case, the chief examples of which are afforded by the Union of South Africa and the Dominion of Canada, the polity tends more towards a unitary state. This may also be said of Republican Germany where there is very great legislative centralisation with executive decentralisation. But in the other case as we see in the U. S. A., Switzerland and Australia, the polity is more closely of a federal form.

Section 85 of the Act of Parliament (9 Edw. VII. cap. 7. 20 September, 1909) establishing the Union of South Africa defines the limited powers which have been assigned to the provinces. It runs: "Subject to the provisions of this Act and the assent of the Governor-General in Council as hereinafter provided, the provincial council may make ordinances in relation to matters coming within the following classes of subjects (that is to say):

- (i) Direct taxation within the province in order to raise a revenue for provincial purposes ;

- (ii) The borrowing of money on the sole credit of the province with the consent of the Governor-General in Council in accordance with regulations to be framed by Parliament ;
- (iii) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides ;
- (iv) Agriculture to the extent and subject to the conditions to be defined by Parliament ;
- (v) The establishment, maintenance, and management of hospitals and charitable institutions ;
- (vi) Municipal institutions, divisional councils, and other local institutions of a similar nature ;
- (vii) Local works and undertakings within the province, other than railways and harbours and such other works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the provincial council or otherwise ;
- (viii) Roads, outspans, ponts, and bridges, connecting two provinces ;
- (ix) Markets and pounds ;
- (x) Fish and game preservation ;
- (xi) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in the section ;

- (xii) Generally all matters which, in the opinion of the Governor-General in Council, are of a merely local or private nature in the province;
- (xiii) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the provincial council.”*

The next Section 86 puts further limits to provincial powers by clearly laying down that “Any ordinance made by a provincial council shall have effect in and for the province as long and as far only as it is not repugnant to any Act of Parliament.”† We thus see that although the powers of provinces in South Africa are wider in range and application than those of a municipal or local authority in a unitary government they are very much limited in scope and do not leave to them any great measure of independence which is the essential feature of a federal constitution. Sir Federick Whyte remarks: “The provinces as now constituted are in fact bound hand and foot to the chariot wheels of the Union.....”‡

In the Dominion of Canada too the provinces have limited powers which have been definitely assigned to them by the British North America Act (30 Vict. cap. 3. 29 March, 1867). Section 92 of the Act says: “In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of Subjects next hereinafter enumerated; that is to say:—

1. The Amendment from time to time, notwithstanding anything in this Act,

* Newton. ‘Federal and Unified Constitutions,’ pp. 382-383.

† Ibid. p. 383. ‡ ‘India A Federation?’ p. 163.

- b. Lines of Steam Ships between the Province and any *British* or Foreign Country:
 - c. Such Works as, although wholly situated within the Province, are before or after their Execution declared by the Parliament of *Canada* to be for the general Administration of *Canada* or for the Advantage of two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
 12. The Solemnization of Marriage in the Province.
 13. Property and Civil Rights in the Province.
 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
 15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
 16. Generally all Matters of a merely local or private Nature in the Province."

These powers are, no doubt, wider than those assigned to the South African Provinces but they have been limited in operation by the provisions of sections 58-60 which leave the appointment of the Provincial Lieutenant Governors to the

Governor-General of Canada. This subordinates the provinces to the superior authority of the Dominion, which fact is further corroborated by the method of appointment of the provincial representatives to the Senate of Canada, a subject to which we shall revert presently.

Then comes the case of federations wherein the constitution delimits the powers of the federal government and gives wider powers to the states or provinces than we have seen in the cases cited above. These are the United States of America, Switzerland, and the Commonwealth of Australia. Before the United States actually federated in 1787 they had a loose Confederacy in which the States asserted their right of full sovereignty which, as they declared, they had acquired on renouncing their allegiance to the British throne. The exponents of the State rights came to be known as the Republicans. Their opponents, the Federalists, among them Hamilton, Jay and Madison, carried on an intensive propaganda through the 'Federalist' in support of the federal government. In these circumstances the compromise made strictly delimited the powers of the federal government, leaving a wide scope of powers to the States themselves. The Constitution of the United States, perhaps the briefest of all modern constitutions, specifically defines what powers are reserved to the federal authority. It is for this reason that each State in the U. S. A. has control over "law and order, civil law, criminal law, local government, education, public health, the raising of the militia, and the general police power."* This is a very wide range of powers which leaves

* Sir Frederick Whyte, 'India A Federation?', pp. 67-68.

very little scope for interference by the federal authorities. True, the subsequent judgments pronounced by the judges of the Supreme Court have considerably enhanced the authority and powers of the federal government by their own interpretation of the Constitution. It is no wonder that in 1787, when science had not made great changes in the lives of peoples, the constitution makers of U. S. A. had not many points to settle, also they had purposely avoided crossing controversial grounds for fear of fatally injuring the federal cause. They, therefore, strictly prescribed the limited powers which the States reluctantly and jealously assigned to the Federal Government. Lord Bryce has very pointedly remarked: "The powers vested in each State are all of them original and inherent powers, which belonged to the State before it entered the Union. Hence they are *prima facie* unlimited, and if a question arises as to any particular power, it is presumed to be enjoyed by the State, unless it can be shown to have been taken away by the Federal Constitution; or, in other words, a State is not deemed to be subject to any restriction which the Constitution has not distinctly imposed. The powers granted to the National government are delegated powers, enumerated in and defined by the instrument which has created the Union. Hence the rule that when a question arises whether the National government possesses a particular power, proof must be given that the power was positively granted. If not granted, it is not possessed, because the Union is an artificial creation, whose government can have nothing but what the people have by the Constitution conferred. The presumption is, therefore, against the National government in

such a case, just as it is for the State in a like case."*

The constitution makers of Switzerland, guided very much by what the Americans had done six decades before, limited the powers of the federal government, leaving a very wide range of powers to the Cantons themselves. In this sense the Cantons very much approach the position occupied by the States in U. S. A.† The Cantons have full powers over poor relief, labour legislation, public health, hospitals, insane asylums and sanitariums, agriculture, industry, education and religion‡ They have a very wide power of cantonal taxation. But what is most characteristic of their powers is the right to conclude 'Concordats' or commercial treaties among themselves, but these have to be reported to the Federal Government for information.§

The Commonwealth of Australia Act (63 and 64 Vict. cap. 12, 9 July 1900) passed at a time when the Australians had before them the experience of U. S. A. and Canada gives a long range of powers to the States. It follows almost a middle course between these two countries and is, to a great extent, free from the defects inherent in their constitutions. Before the States federated they were independent in their internal

*Quoted by Sir Frederick Whyte in 'India A Federation?', p. 68.

†Bryce. 'American Commonwealth,' Ed. 1910, vol. 1. p. 413.

‡The religious autonomy or freedom came to the Cantons as a result of the Sonderbund. It was this religious trouble which at one time threatened the very existence of the Swiss federation.

§Brooks. 'Government and Politics of Switzerland,' pp. 342-343.

affairs. Therefore they delegated only those powers which they thought very necessary for common action. Their constitutions, as they stood before 1900, retained their original character even after the federation, except in so far as they were affected by the assigning of some powers to the Commonwealth Government.

This, in short, is the division of powers between the federal governments and state governments in modern federations. The diversity is ascribable to two reasons, (i) the different or dissimilar conditions of the countries, and (ii) the circumstances under which federations were formed. Where the fear of external attacks has been great or where the federation was a result of centralising tendencies the powers of the federal government were wide. On the other hand, where no such fear was in existence but the federation came by slow degrees, the idea proceeding from the states themselves, the latter have jealously guarded their *status quo* at the time of union and have given only minimum powers to be exercised by the federal government.

(c) *The Residuary Powers in a Federation*

The most important part of the distribution of powers in federations is the location of the residuary or undefined powers. Even the greatest amount of precision with which the powers be divided between the federal government and the state governments cannot succeed in assigning all the powers which a Government is capable of exercising. It is for this reason that the necessity of locating the residuary powers in a federation becomes paramount in the framing of a federal constitution. This is done either by loca-

ting them in one of the two governments, the federal and the provincial, or by giving them both concurrent power. In U. S. A., Switzerland and Australia, the residuary powers are assigned to the state governments, whereas in Canada and South Africa they are within the jurisdiction of the central government. The case of Republican Germany is clearly indicated by centralising the sole legislative powers in some matters but making it optional in others, but allowing the states the execution of even the federal legislative measures. This is provided for by Article 14 of the Constitution, but Article 13 stipulates that "Federal law overrides State Law."* This is also the case in the Australian Commonwealth. But in almost all federations, wherever this concurrent power has been given, it is definitely laid down that in case of conflict between the federal government and the state government over the concurrent powers the federal or central government will have the decisive voice. And this is also a very necessary condition if the federal polity is to last and is not to be made extinct by

*Article 15 of the German Constitution says: ".....In so far as Federal laws are carried into execution by State authorities, the Federal Government may issue general instructions. For the purpose of supervision of Federal law, the Government is empowered to despatch commissioners to the State central authorities, and, with their consent, to the subordinate authorities. It is the duty of the State Governments, at the request of the Federal Government, to remedy defects observed in the execution of Federal laws. In case of differences of opinion, both the Federal Government and the State Government may appeal to the decision of the Supreme Court of Judicature, where no other court has been determined by Federal law."

A. P. Newton. "Federal and Unified Constitutions," p. 412.

the opposition of the states of which it is composed.

2. The Separation of Powers in a Federation.

Here we are concerned with the separation of powers in the Federal or Central Government in a federation and not with that in the provincial or state governments. In classic theory if the powers of making laws, executing them and also interpreting or punishing their violation are combined in the same person or body of persons there can be no guarantee of freedom to the citizens. To do so is to sow the seed of tyranny. It is chiefly for this reason that in the United States of America the legislature, executive and judiciary are separate from each other, no one encroaching upon the work of the other. And if this separation of functions was necessary in any form of polity it was much more so in the case of a federation where the problem is not only one between one individual and another but that between one state and another, or between one government and another. In the case of a federation it was thought that the compromise—the basis of that polity—cannot last even a twelve month if these functions are not separated from each other. Of course, now a days the separation of powers is not based on the classic theory which was based on special circumstances then prevailing in U.S. A., but it is done for the sake of convenience. Only the judiciary is now entirely separate from and independent of the legislature or the executive.

(a) *The Federal Legislature.*

The legislature of a federal or central government has limited scope of legislation confined as

it is within the allotted sphere of action. It cannot go beyond that, for if it does so it violates the constitution which brought it into existence. Clearly, therefore, a federal legislature is not an all supreme legislative body. But what is of importance in the composition of a federal legislature is the form it should take. Should it be unicameral or bicameral? It has become almost a fashion for those who have any connection with constitution-making to establish a bicameral legislature. We are concerned with this question primarily from the federal point of view, but the other aspects of it are not entirely unrelated to it. The grounds in favour of this system, as advanced by them, are that it creates an upper chamber which (i) can restrain hasty legislation, and (ii) can amend obnoxious measure. In the first case, if the upper house frequently exercises its restraining influence, it defeats the chief purpose for which the lower house is created, *viz.* to give the people as a whole the decisive voice in the work of legislation. What use is there in creating a popular house when its decisions are upset by another less popular or representing persons different from the people at large? And in the latter case the bicameralists presume that all talent, wisdom, and cautiousness are solely vested in the upper house as if the members of the lower house are devoid of these qualities. But what is the verdict of experience, the oracle of wisdom? It tells quite a different tale. In all civilised countries with the exception of U. S. A. the lower house is more powerful than the Upper house. The former, almost without exception, attracts to itself the best brains of the nation. It holds the strings of the nation's purse

in its hands ; it mirrors the real will of the people and approaches the ideal of democracy much more than the upper house. Examples are wanting to demonstrate that if the lower house has been allowed to legislate unchecked, by the upper house grave national wrongs have been done or catrastrophes precipitated.

Let us dispassionately examine the necessity for an upper house. If it is also a purely elected popular chamber returned by the same voters as the lower house, as is the case in the Australian Commonwealth, it is an unnecessary duplication of the same machinery. But if it is elected on a narrow franchise it runs counter to the true spirit of democratic institutions. If it is a nominated body, the device only puts greater legislative power in the hands of the nominating body. If it is an hereditary institution, it incorrectly assumes that legislative talent is something which can be inherited or bequeathed. And if it is composed of representatives of professions it is impossible to apportion the membership between one profession and another by adjudging their relative importance.

There is another aspect, too, of this problem, *viz.* the respective powers of the two houses. If they are equal, bicameralism is worse than unnecessary ; if unequal, then the house possessing greater or over-riding authority makes the other house nugatory. All this shows that bicameral legislatures are unnecessary in democratic governments. But there are some useful purposes which they serve. Generally all upper houses are smaller than lower houses, the only exception being the English House of Peers. So that in the upper house there is less pandemonium and greater

chance of reasoning and argumentation on a legislative measure, where men of different parties can get more time to ventilate their views. Such is the case in U. S. A., Canada, and Australia. This is surely a great advantage of an upper house, and an argument in favour of its creation or retention. But cannot the same advantage be secured in a unicameral legislature by some sort of legislative device? We find that the committee system of legislation is increasing in all legislatures. By forming small committees, composed of members of all important parties, to examine and report on the legislative measures before the house we can better provide for a full debate on the measures. And as the small committees hold their sittings in camera members will more freely express their real opinions which they would not do easily in a place where they are listened to by the people at large. This system insures amending of a measure as well as checking of the haste with which a measure may be hurried through the house. And when it is coupled with the provision for the circulation of all important legislation to elicit public opinion the advantages of an upper house are, with interest, obtained even in a single chamber. But it provides another advantage which an upper house does not possess. By taking into confidence the prominent members of the opposition before the stage of final legislation is reached the party in power minimises the opposition with which the measure is likely to be received in the house. However, assuming that even after taking all these steps a measure is passed by the lower house which is hasty and is detrimental to the best interests of the state and which would have been rejected or radically

in federal constitutions. The chief argument advanced is that the composition of the upper house affords equality of status to all the states of the federation, big as well as small alike, and thus this house remains the sheet-anchor or the custodian and protector of state rights. Without the upper house, it is asserted, the small states in the federation will be out-voted by the bigger ones in the lower house and in this way equal status of all states, the fundamental principle of federalism, will be violated. It must be frankly admitted that at the federative stage, no doubt, in all federations the states insisted on the establishment of the upper house on the principle of equality. And this principle has been practically incorporated in all modern federal constitutions. It will be of significance here to discuss how far their apprehensions were true and how far their expectations have been fulfilled by the creation of upper houses.

We shall take here the three examples of the U. S. A., Canada and Australia. Each of the 48 states of the U. S. A. has two Senators in the Senate, making a total of 96. Formerly they were elected by the legislatures of the respective states but since 1913 they are directly elected by the people of the states. In addition to being a revising legislative house, the Senate has also some judicial authority.* It also acts as an important branch of the executive by making it obligatory on the President to consult it in impor-

* Section III of Article I of the Constitution of the U. S. A. says: "The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation."

Newton. 'Federal and Unified Constitutions,' p. 82.

tant matters particularly foreign affairs. In Canada each of the four sections, *viz.* Province of Quebec, Province of Ontario, the Maritime Provinces, and the Western Provinces, has 24 Senators, making a total of 96 ; each of the four maritime Provinces having 6 a piece, and each of the 2 Western Provinces 12 a piece. The Canadian Senators are nominated for life by the Governor-General in Council, *i.e.* by the party in power in the lower house at the time of a vacancy. But in the U. S. A. one-third of the Senators retire after every two years, therefore the Senate always contains two-thirds of old members. In Australia the six states have six Senators a piece, making a total of 36, one half of them retiring every three years. They are elected by the respective states, the whole state territory taken as one constituency. Only in case of dissolution, when there is a deadlock between the two houses is the Senate entirely elected at one time. In each of these three federations the provinces or states before federating insisted on the recognition of equality of all states by giving them equal representation in the upper house. They expected that the Senators from a state would always try to safeguard the state rights.* But the actual working of the Senate has falsified these vain hopes. In U. S. A. at the time of general election and also in the process of legislation the Senators work on party lines, forgetting the state from

*How erroneous was the idea that the central legislature would have many matters in which the states would form different parties! In federations all affairs affecting the interests of the states are left within the competence of the state Government. So that equal representation in one branch of the federal legislature was not so important as the acquiring control over some subjects of administration.

which they are elected, and consider themselves only as Republicans or Democrats. The two Senators of no state vote alike if they happen to belong to the different political parties. Similarly in Canada they vote as liberals and conservatives, and not as the representatives of the Province of Quebec or the Province of Ontario. The same is the case in Australia where they vote on definite party lines. True, in the old German Empire the members of the Bundesrath voted statewise, all members from one state voting alike as instructed by their state government. In this sense the Bundesrath was more an assembly of state delegates or ambassadors than an upper house of state representatives. So that in comparison with the three federations mentioned above the Bundesrath mirrored the state views and safeguarded state rights in a much better way. But even there the 17 negative votes of Prussia vetoed a measure and the status of state equality was no more recognised in actual practice. We, therefore, clearly see that the party system of government in modern federations does not recognise the existence of state rights as contradistinguished from national rights, and that even in their upper houses of legislatures party lines cross state boundaries. In fact these upper houses of federal legislatures have ceased to be the sheet-anchor or the protector of state rights as was anticipated by the states when they went into federation. The truth is that what falsely appeared to them to be the bulwark of their rights has proved to be a mere phantom and by appeasing their sentiments has done them no special good, as no such occasion has arisen.

But it must be admitted that in federations

composed of small as well as big states there must be some provisions in the constitution for safeguarding the state rights. This may be done either (i) by giving the small states representation in the federal legislature, which may be unicameral, in excess of their population without, of course, not very materially affecting the representation of big states, or (ii) by giving them judicial protection against undue encroachment on their rights, and this is surely in operation in the Supreme Courts of all federations, or (iii) by making some provision for the inclusion of their representatives in the executive itself.* But to establish an upper house of legislature for this purpose is only useless and unnecessary as it has so far failed to give any such protection, as no such necessity arose.

Space does not permit a fuller treatment of the upper houses in all federations, but to make the subject more clear we only take the Senate of Canada which follows a middle course between being a purely hereditary and an entirely elected upper house. Although the French Canadians of Quebec look upon it as the true guardian of their rights and they would not assent to its

*This device is actually in practice in Canada. Speaking of this Mackay says: "Similarly the Cabinet is always a federal body. It would be almost as unconstitutional for a Prime Minister to compose a Cabinet of representatives from a single province or a single section of the Dominion as it would be to remain in office after a vote of want of confidence in the Commons." 'The Unreformed Senate of Canada,' p. 76.

"A Prime Minister has been able to maintain the principle of federal or sectional representation in his Cabinet without weakening seriously the quality of its membership." Ibid. p. 176.

modification*—certainly not to its total abolition—the Senate has never been given the opportunity to discuss their provincial rights. In fact the only measures which it ever thought fit to amend were those that concerned the Dominion as a whole. It has never attracted the aspiration of politicians in the prime of their life during which period they had always preferred to go to the lower house. The Senate has often been derided as the ‘Home for the Aged’ and it has never satisfied the reformers or the political enthusiasts by its unwillingness to do anything which they wished it to do.† It has often served the purpose of a

*“Plans to mend or end the Senate of Canada are confronted by the problem of securing the consent of the minority. The people of the province of Quebec are suspicious of constitutional changes which may imperil their own cherished political ideals.....No Government could long endure in Canada which was open to the charge of violating the fundamental agreement on which the union is based.”

Mackay. ‘The Unreformed Senate of Canada.’ Introduction, by G. M. Wrong. p. XV.

† In the year 1920 the Senate of Canada was composed of Senators among whom :

4	were	under	50	years	of	age.
23	„	over	50	years	but	under 60 years.
40	„	„	60	„	„	„ 70 „
16	„	„	70	„	„	„ 80 „
5	„	„	80	„	... ..	...

Mackay. ‘The Unreformed Senate of Canada,’ p. 191.

“While the work of revision is not usually strenuous, and even old men may perform this duty admirably, the presence of so many old men and the absence of young ones, together with the high average age, is a serious psychological defect.” Ibid.

“If a bill for social or moral reform is rejected the Senate is attacked from end to end of the country by impatient reformers and condemned as an immoral, reactionary and autocratic body.....Of late years it has become the fashion to attack the Senate as the foe of public ownership because

political reservoir for the ministerial favourites, to which the Cabinet has, whenever a vacancy occurred, translated those persons who had contributed to its party funds or were useful to it in several other ways*. But it is the House of Representatives where the chief measures are enacted and the real legislation done. Therefore, if it is ever intended to safeguard the state rights it ought to be tried in the lower house where the real battle is fought.†

But at the time of federation the Senate was considered by the smaller provinces their true guardian. The debates in the Quebec Conference (1864) clearly indicated how state particularism was in the ascendency. Although Mr. Alexander

it has interfered with several bills for the construction of railways by the Dominion. The Senate as a 'Home for the Aged,' as a refuge for old warriors and as a means of rewarding contributors to the party war chest, is the continual butt of newspaper wits. And yet, for all its unpopularity, the Senate continues on its dignified way, little changed from what it was half a century ago." Ibid p. 1.

* Mr. Goldwin Smith wrote in the 'The Bystander' (Toronto) 1883. "The Senate is a bribery fund in the hands of the Government, and paddock for the 'Old Wheel Horse' of the party, nor, on its present footing, will it be anything else.....A Minister cannot help himself, the goods in the shape of party services and expenditures on elections have been delivered, and he is compelled to pay." Quoted, Ibid. p. 173.

† "It is on the floor of the commons that the part of the political drama which the public sees is played. It is there that the never-ending battle between the 'Ins' and the 'Outs' goes on. The whole romance of politics during the interval between the elections centres in the Commons. The Senate on the other hand, is but the ante-room to the political stage. In the Commons, too, all party measures are introduced; by the time these reach the Senate the public is surfeited and gladly turns to fresh matters of interest. Moreover the purse strings are held in the Commons." Ibid. p. 73.

Mackenzie pressed his views* for a unicameral legislature his opponent Mr. Macdonald, carried his point in favour of creating a Senate.† And it was this compromise of establishing an upper house of legislature which obtained the sanction of the representatives of smaller provinces to the formation of the federation,‡ and enabled the Quebec Conference to arrive at a final decision.

(b) *The Federal Executive.*

The part which the executive plays in the government of a country is of supreme importance. It is not sufficient only to ensure good legislation, for laws may be good but the way in which they are executed can very easily defeat the purpose of good legislation. This is why despotism is always looked upon with abhorrence and the polity which does not provide for proper execution of laws defeats the ideal of democracy. Truly has it been said that 'the exercise of authority is surrounded by a penumbra of anarchy.'§ Evidently, therefore, political contentment depends on the exercise of control over the administration under which men live.

But the necessity of having proper form of executive authority in a federation becomes

* "In the whole debate in the Parliament of Canada Alexander Mackenzie alone seems to have pressed the idea that parliamentary government could be carried on by a single chamber. It was his opinion that second chambers arose out of feudalism and that they tended to decline in importance with the spread of democracy." Ibid. p. 50.

† Conference debates 36. Quoted. Ibid. p. 50.

‡ "The basis of representation in the Upper House was the great compromise of the conference, just as it had been in the Convention of the American States at Philadelphia."

Mackay. 'The Unreformed Senate of Canada', p. 39.

§ Laski. 'A Grammar of Politics,' p. 250.

greater, in view of the multilateral problems of its component parts, than in the case of a unitary government. We find in modern federations two ways of setting up the executive authority. The first is the parliamentary form of government which is based upon the responsibility of the executive to the legislature. This is in vogue in Canada, Australia and South Africa, and has also been adopted by Republican Germany. Theoretically speaking, the constitutions of the three dominions vest all executive authority in the British King or his representative, *i.e.* the Governor-General of the Dominion.* But the actual practice in each dominion is that the Governor-General entrusts the task of forming a cabinet to the leader of the majority party in the legislature. This system has been copied from the Mother Country, the constitution of Canada making it abundantly clear. The preamble to the British North America Act says: "Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into One Dominion under the Crown

* Section 9 of the British North America Act says:—

"The Executive Government of and over Canada is hereby declared to continue and be vested in the Queen."

Newton. 'Federal and Unified Constitutions', p. 202. Section 61 of the Constitution of Australia says:

"The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this constitution and of the laws of the Commonwealth." *Ibid.* p. 342.

Section 8 of the constitution of South African Union States: "The executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a Governor-General as his representative." *Ibid.* p. 361.

elected by the presidential voters who are elected for the purpose by the citizens of each state. So that the President is an elected magistrate who holds his office for four years but can be impeached for treason. His executive powers are very great, greater than those of any executive head in any democratic country. He appoints his own cabinet ministers who are responsible to him alone and are not members of the Congress but can attend any house to explain their schemes. They act as the President instructs them.* But as in all important matters particularly those relating to treaties with foreign countries he has to secure the assent of the Senate; he cannot rule despotically.† As he is the favourite of a particular party and is not only anxious to keep the party pleased but also to win popular support to earn a name in the history of his country he keeps his policy in conformity with the wishes of his countrymen. We thus see that the Americans have carried this principle of separation of powers rather too far.

In Switzerland the executive consists of seven members who form the Federal Council, the chief executive body of the country, which is the most peculiar body.‡ It entirely differs from the executive of other federations in several respects.

* "The President usually consults the Cabinet about the more important questions of legislation and executive policy, but he is under no obligation to do so.....The importance of the cabinet depends on the relative weight of the personality of its members and of the President. The cabinet meets in secret, and it keeps no records. Its votes are of no consequence, the President being free to follow its advice or not."

Reed. 'Form and Functions of American Government,' p. 245.

†Ibid. p. 246.

‡Brooks. 'Government and Politics of Switzerland,' p. 103.

This peculiarity is due to previous history and environments in which the Swiss federation was set up. According to the constitution no two councillors can be elected from the same Canton, nor can two persons who are even distant relatives be members of the Council at the same time.* The term of the Council is three years but the Councillors are usually re-elected as long as they desire to remain there, and the result is that members have often put in long terms of office extending sometimes over a quarter of a century. They are not responsible to the legislature in the parliamentary sense but they carry out its orders and instructions. All this indicates how far the Cantons have shown mutual jealousy, having had bitter experience under the Hapsburgs, and so they made the executive absolutely subservient to the legislature. Afraid of any one Councillor assuming dictatorial powers they have provided for the annual election of a president, and a vice-president of the one year automatically becomes president for the succeeding year, the outgoing president becoming an ordinary councillor. The president, except representing the federation on ceremonial occasions, has almost the same powers as his colleagues.

The question of the kind of executive does not, therefore, seem to have any intimate relation to the question of federations. It would seem to depend upon other circumstances like the influence of the theory of separation of powers when the U. S. A. constitution was framed, or the traditions of the English executive when the dominion federations were formed, or the special conditions of political life as in Switzerland.

*Ibid. pp. 104-105.

(c) *The Federal Judiciary.*

We now come to the third and the last branch of federal administration, *i.e.* the Judiciary which is the most important and the most peculiar withal. This peculiar position of a federal judiciary is almost an essential feature of a federal constitution. We have discussed in the first chapter that a federal constitution is supreme, and that there are two governments ever demanding allegiance from the citizen. To uphold the supremacy of the constitution and also to decide all controversial points arising between the state governments and the federal government is the chief function of a federal Supreme Court, besides its being the highest appellate court for ordinary purposes in a federation.

A federal constitution being from its very nature a compact between several independent or 'quasi-independent states, it is essential that there must be a body created under the constitution and deriving its authority from it and still separate from and independent of all other branches of federal administration, which should definitely guard against the breach of that compact. The framers of the U. S. A. constitution very early perceived the necessity of such a body and so they established their Supreme Court which, apart from being the highest national tribunal, is at once the guardian of the rights of the states and also a true interpreter and firm upholder of the constitution. It has amply justified its creation and existence by its working and has set a very great example to the framers of federal constitutions.

This example was quickly followed by the

Swiss and later on by the Canadians, the Australians and the South Africans, and very recently by the German Republicans. But the powers and composition of the judiciary in all these federations are not the same. In U. S. A. and Republican Germany the Supreme Court is the final judicial authority, and so it is in Swizerland, but subject to confirmation by the Federal Assembly in this case. In Canada, Australia and South Africa the Supreme Court occupies a slightly different position in as much as appeals may be preferred in the Judicial Committee of His Majesty's Privy Council, which has resulted in the maintenance of a very high standard of uniformity of justice in the whole of the British Empire.

Article III of the U. S. A. Constitution deals with the establishment of the Supreme Court. Section II of that Article defines its powers thus: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States citizens, or subjects." *According to Section I the judges hold office during good

* A. P. Newton. 'Federal and Unified Constitutions,' p. 91.

behaviour* and their emoluments are not to be diminished during their continuance in office.

Besides being the highest court of appeal in some cases, a court of original jurisdiction in others, the Supreme Court has the sole authority, to pronounce upon the validity or otherwise of the laws passed by the Congress or by the State Legislatures. But the Supreme Court does not take the initiative to discharge this duty, for to do so would create unnecessary trouble and irritation. It is only when a case is brought before it that it examines whether the laws under which it has arisen is itself in conformity with the spirit of the Constitution or not. It holds the Constitution as the Supreme Law of the land and uses it as the touchstone to test the validity of subsequent legislation and statute making, and whenever it finds that a certain law is contrary to the spirit of the Constitution it at once declares the law or the specific part thereof as void.† In this way

*“The standard of good behaviour for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.”

‘Federalist,’ No. LXXIII.

This view of Hamilton explains the reason why the Americans laid down the condition for continuance in office of the judicial officers during good behaviour.

† “No legislative act, therefore, contrary to the constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue

the Court by its judicial interpretation upholds the supremacy of the Constitution, and prohibits encroachments upon the powers of the Central Government by the States and *vice versa*. In no other way could uniformity in judicial interpretation of the laws and the upholding the dignity of the Constitution be provided for except by the creation of one Supreme Court for the whole of the federation, and that too under the authority of the Constitution itself, and also by giving the Court co-extensive power with the legislative authority.*

Such was the intention and such the device of the fathers of the United States Constitution. Their hopes have been fulfilled by the actual working of their Supreme Court. It has attracted to its bench some of the ablest exponents of law, who have very ably contributed to the cause of justice in America. The Court has preserved the Constitution, it has maintained justice between one State and another, it has kept the authority of the Central Government quite separate from that of the State Governments, and lastly it has enabled the citizens to enjoy the benefits of powers, may do not only what their powers do not authorise, but what they forbid."

'Federalist,' No. LXXVIII.

* "If there are such things as political axioms, the propriety of the judicial power of a government being co-extensive with its legislative, may be ranked among the number. The mere uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same cause, arising upon the laws, is a hydra in government, from which nothing but contradiction and confusion can proceed." 'Federalist,' No. LXXX.

Since Hamilton wrote this the number thirteen has gone up to 48 and his argument has greater weight now than perhaps he himself should have imagined at that time.

impartial justice. But the most important of its earlier works has been the expounding of the doctrine of 'implied powers.'

We take here a few constitutional cases to illustrate the practical contribution of the U. S. A. Supreme Court to the cause of constitutional jurisdiction. It is important to preface this examination by an explanation which has got an importance of its own. It was never intended to give to the Supreme Court the power to amend the Constitution, but the rapid advancement of science, particularly in the nineteenth century, raised new problems which had not been foreseen by the framers of the Constitution. The Court had, therefore, to expound the doctrine of 'implied powers' and this virtually led to the passing of some important constitutional amendments. In this connection Chief Justice Marshall deserves the greatest credit for doing some very valuable work. In 1803 soon after he became Chief Justice, the Supreme Court had to decide an important case *Marbury versus Madison* (1 cranch, 137). The chief point at issue in this case was whether the Congress could pass a statute to confer upon the Court a power not given it (the Court) by the Constitution. In delivering the opinion of the Court, Marshall C. J. observed: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular case must of necessity expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each."* And he declared that the Constitution being the Supreme

* Leading Cases on the Constitution of the United States.' p. 4.

Law of the land, the Supreme Court judges, by the very terms of the oath of office to maintain and uphold the Constitution, had the authority to pronounce upon the validity or otherwise of the statutes passed by the Congress.

Sixteen years later in 1819, a very important case *Mc. Culloch versus Maryland* (4 Wheat, 316) came up before the Supreme Court. The facts were that in 1816 the U. S. A. Government incorporated the Bank of the United States. In the following year a branch of the Bank was established at Baltimore in the State of Maryland. In 1818 the legislature of this state passed an act to impose a tax on all banks not chartered by the state legislature, making it obligatory on them to issue notes on a particular kind of stamped paper. Mc. Culloch, the cashier of the Bank, defied this law and issued notes on unstamped paper, whereupon the State prosecuted him. This audacious act of the State to tax the Bank of the national government, an act absolutely contrary to the spirit of the fathers of the federation, must have stirred Hamilton in his grave. No doubt such a procedure was sure to undermine the unity lying at the root of the Constitution. In delivering the opinion of the Court, Marshall observed: "The government of the Union..... is emphatically and truly a government of the people. In force and substance it emanates from them, its powers are granted by them, and are to be exercised directly upon them and for their benefit."* He held that although the Constitution did not confer upon the national government the power to charter a bank, yet this power was

*Leading Cases on the Constitution of the United States, p. 44.

implied in the powers enumerated in the Constitution and assigned to the federal government. Section VIII of Article I of the Constitution gave the Congress, among other powers, the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence, to borrow money, regulate commerce with foreign nations and among the several States, and with the Indian tribes. Justice Marshall held that to carry out these duties the same section gave the Congress power "To make all laws which shall be necessary for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department of office thereof"* and, therefore, the chartering of a bank being a power necessary for the execution of most of these powers and not a power in itself, the Congress had the authority, conferred by the Constitution, to charter a bank, a power incidental to the discharge of its legitimate functions. The Supreme Court, accordingly, invalidated the Act passed by the state legislature of Maryland as being repugnant to the Supreme Law of the land.

Again in 1837 Chief Justice Taney in delivering judgment of the Court in the case 'The Proprietors of the Charles River Bridge' *versus* 'The Proprietors of the Warren Bridge' (commonly called the Charles River Bridge Case. 11 Peters, 420), invalidated an Act passed by the State legislature of Massachusetts.† These and many other decisions by the Supreme Court of America have gone a great way in interpreting the Constitution

* Newton, 'Federal and Unified Constitutions,' p. 86.

†Leading cases of the Constitution on the United States, pp. 17-27.

and upholding its supremacy. But recently the U. S. A. Supreme Court has been criticised as being extremely conservative in interpreting the letter of the American Constitution.

But where the Americans completely succeeded in establishing a federal Judiciary competent to protect the rights of all the parties concerned the Swiss, although they copied most of their constitution from the Americans, have signally failed to achieve the object of making their Judiciary what it ought to be in the circumstances of their federation. Afraid of entrusting any independent body with the exercise of even judicial powers they have provided for the election of the judges by the Federal Assembly, and have fixed their term which makes them dependent upon the will of the legislature. The Court is a creation of the constitution of the year 1848, but the subsequent revisions as well as the volume of legislation have increased the sphere of its jurisdiction. But the court does not possess the power to declare any act or statute unconstitutional and so it cannot function as the upholder of the Constitution, although in actual practice the system does not work as unsatisfactorily as it appears to be in theory, and this is on account of special conditions of Swiss political life. But it can discuss whether any law or act is or is not in conformity with the spirit of the Constitution, but all laws or acts of the Cantonal or Federal Legislatures are binding on it. In this sense it resembles the judiciary of other European countries and differs from the judiciary of U. S. A. Also its decisions may, in certain cases, be upset by the legislature which assumes judicial powers. Another federal feature of the Swiss judiciary is

that the judges must be so elected as to represent all the three languages on the bench. The Federal Court is located at Lausanne, the capital of the French speaking canton Vaud, which is a compromise to gain the sympathies of the French speaking population, but it also enables the Court to hold its sittings unhampered by the turmoil and influences of the legislature at Bern.

In federal law the jurisdiction of the Federal Court extends to all cases of conflict of jurisdiction between the federal and the cantonal authorities; to all disputes arising between the cantons themselves, and to complaints of all citizens involving violations of their constitutional rights. In civil suits the Court exercises its jurisdiction in cases between the federation and cantons, those between the cantons, and those in which the federation is a party against individuals. So that the Court has jurisdiction extending over quite a large sphere, and this is increasing with the increase in the volume of federal legislation. Even then it is true "That it will attain the constitutional position of the Supreme Court of the United States and particularly the power to declare legislative acts unconstitutional, does not, however, seem probable. It would be contrary not only to Swiss but to continental traditions as well."* So that because of its limited power and the mode of election of the judges and their tenure as well as the control of the legislature over the judiciary, the Swiss have failed to establish an impartial and a powerful federal judiciary, and this becomes more noteworthy when it is remembered that they have copied the Americans in several respects.

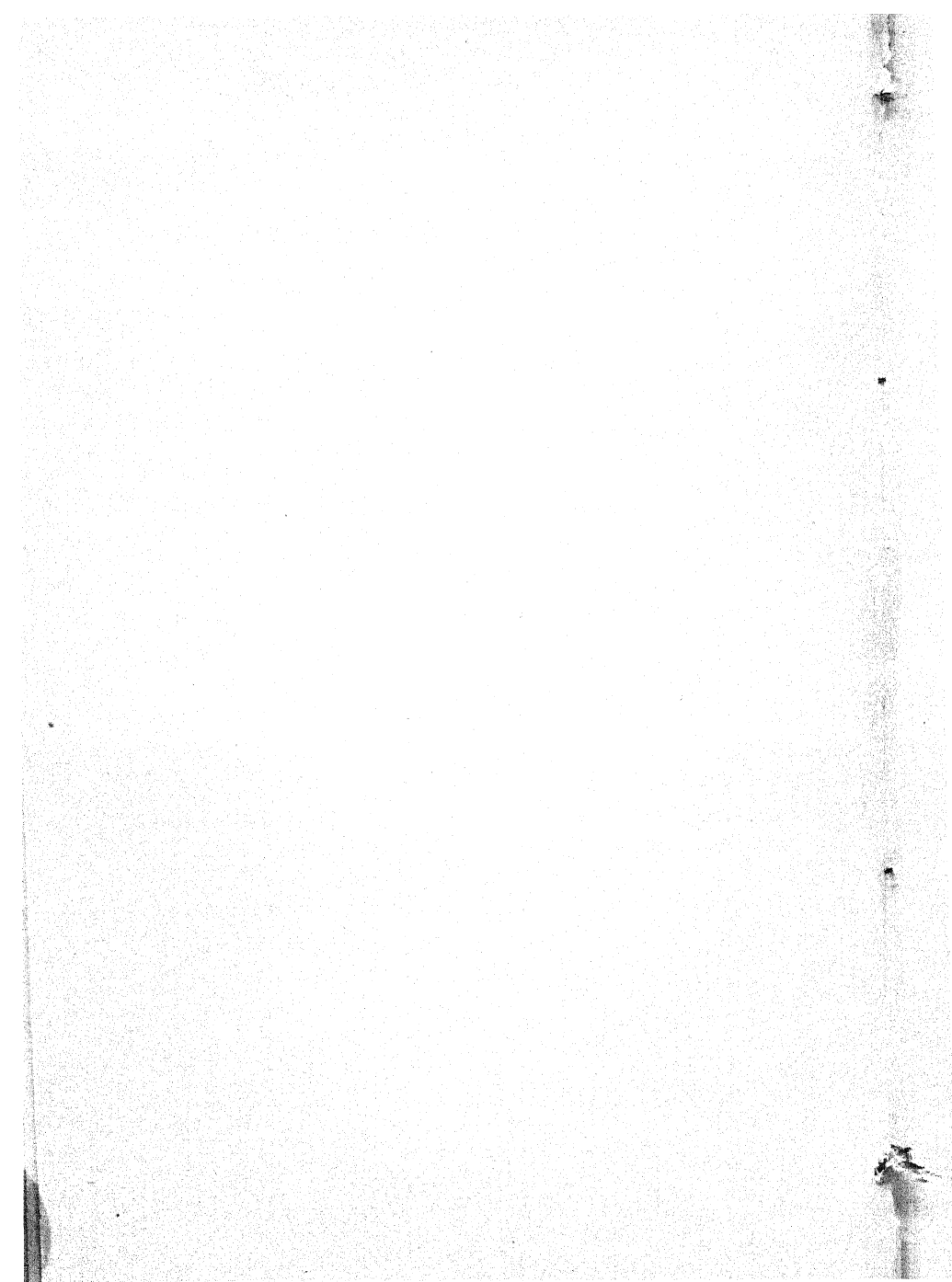
*Brooks. Government and Politics of Switzerland, p. 177.

PART TWO

APPLICATION OF FEDERALISM TO INDIA

"Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central Government, increasingly representative of and responsible to the people of all of them; dealing with matters both internal and external, of common interest to the whole of India; acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States."

E. S. Montagu and Lord Chelmsford.



CHAPTER IV

THE HISTORICAL BACKGROUND

Introductory.

There is much truth in Mr. Graham Wallas' observation: "We have become biologically more fitted to live with the help of our social heritage, and biologically less fitted to live without it. We have become, one may say, biologically parasitic upon our social heritage."* Our present social structure is to a very great extent the slow and imperceptible evolution of the ancient state. The reason is simple. A revolutionary departure from our heritage resulting in a new product entirely unrelated to that heritage is an impossibility. Nurture is assuredly an important element in our social evolution and development, but that nurture is dependent upon various factors, geographical including climatic conditions and the influence of neighbourhood, cultural and racial. And this variety in environments chiefly accounts for the differences in national character. We in India have developed our own institutions which are in many instances unique in their character and substantially different from those of other nations. In any attempt at a future reconstruction of our political constitution, therefore, stock must be taken of our past as well as present, so that any

* 'Our Social Heritage,' p. 19.

future changes and developments may be adaptable—and they must be adaptable if they are to be permanent—to our special national heritage.

The material and sources available for an adequate study of India's past are of various descriptions. While direct evidence in the form of distinct political theories or historical narratives of ancient Indian polity is not available, the accounts which are in existence are sufficient to enable us to picture the form of that polity. Religion was the one element that permeated the whole life of our ancestors. To them the very basis of society was religion, and, no wonder, religion played such an important part in the building up of their polity. Religious books, therefore, constitute the chief source of our knowledge of ancient India, *viz.* the Veda Sanhitas, the Upnishads, the Brahman granthas, the Smritis (the chief of them being those of Manu, Parashar, and Yajnavalkya), the Epics i.e. the Ramayan and the Mahabharat (particularly the Shanti Parva), the Puranas. The accounts of foreign travellers like Magasthenies, Fa-Hian, and Yuan Chwang, of the contemporary social and political life of the country supplement that knowledge.

There are other contemporary writings such as Banbhatt's Harsa Charitra, which throw a good deal of light on the past. But the only serious political study, free from the religious aspect, is the Arthashastra of Kautilya or Chanakya, the Indian Bismarck. Chanakya was responsible for the fall of the Nand dynasty in Magadh and the enthronement of Chandragupta, the first Mauryan Emperor of Northern India. He was mainly instrumental in consolidating the extensive conquests of Chandragupta, and the polity he describes in his

valuable book may be taken as that existent in India about the fourth century B. C.

Modern researches into ancient Hindu polity are mainly based upon the aforesaid material and though there may be slight variations in the conclusions of different students in accordance with their own individual perspectives and inclinations, their theses give a fairly true picture of the ancient Hindu polity.

Of the Afghan and Moghal periods, very reliable contemporary accounts are available. These accounts are correct history written as they are by contemporary scholars, including foreign travellers, and in some cases by the rulers themselves, such as Babur and Jehangir.

The material for the history of the British period is abundant and we have detailed accounts of the origin and growth of the present system of administration of British India.

Relying on these varied sources, an attempt is made here to give a brief but faithful account of the nature of the Indian polity only in so far as it is concerned with the relations subsisting between the many states and kingdoms then existing in India.

(a) *Ancient Hindu India.*

In Ancient India a village was the unit of administration. It enjoyed complete local freedom under an elected headman who was assisted by a *panchayat* in the election of which every adult had a voice.* The *panchayat* exercised considerable influence in the social and political life of the villagers. The headman was responsible for securing the community against outside invasions

* 'RG Vedic Culture,' p. 299.

and for this purpose he had full liberty to make alliances with neighbouring villages. A number of villages often combined together to maintain works of public utility such as inter-village bridges, roads and other means of transport.* But the villages, save when they themselves elected to combine for common objects, retained absolute independence of each other in all matters which were purely local.† For such purposes usually there were combinations of ten villages, and ten such combinations formed bigger alliances of a hundred villages.‡ Notwithstanding these alliances the village headman was directly responsible to the central authority of the kingdom § When alliances were thus formed the head of the union was an elected official and his native village often took a supreme position over other villages. ||

Such were the small units inside a kingdom. But the whole of India was divided into many kingdoms, some small and others large, which enjoyed very great local autonomy. Sometimes an ambitious king of a powerful kingdom entered upon the conquest or subjugation of the other kingdoms, on the plea of the Vedic texts which enjoin upon a powerful and capable ruler to undertake the conquest of the weaker and not well administered neighbouring kingdoms. Oft times these conquests were made a religious obligation on the part of a powerful king. The

*Ibid p. 301.

†Ibid p. 300.

‡'The Theory of State in Ancient India' p. 133.

Also Manu, Ch. VII, 115-117,

§ 'Public Administration in Ancient India', pp. 292-3.

|| 'R̥g̐ Vedic Culture' p. 301.

ancient sanskrit books refer to Digvijayas 'conquests of all quarters) and Asvamedha Yajnas undertaken by the king of kings.*

Maharaja Dasrath, his son Ram Chandra, then Yudhisthira, Ajat Satru, Vikramaditya, Chandragupta and Harsa are said to have made extensive conquests for assuming the title of Chakravarti Rajas.

Dasrath once spoke of the extent of his empire thus:—

"Mine are the tribes in eastern lands
And those who dwell on Sindhu's sands,
Mine is Surastra far away,
Sauvira's realm admits my sway;
My hests the Southern nations fear,
The Aryas and the Vangas hear,
And as Lord paramount I reign
O'er Magadh and the Matsya's plain,
Kosal and Kasi's wide domain
All Rich in treasures of the mine
In golden, corn, sheep, goats and kine" †

As late as the third century B.C. Asoka attempted wide conquests, although with the primary object of spreading the Buddhist cult. His Rock Edict XIII is clear on this point. It runs; "And this is the chiefest conquest in the opinion of His Sacred Majesty—the conquest of Dharma and this conquest, again, has been won by His Sacred Majesty both in his own dominions and in all the neighbouring realms as far as six hundred leagues—where the Greek King Antiochos dwells, and north of that Antiochos to where dwell the four

*The various Hindu Sacred Books contain the term 'Rajya' indicating 'Sovereign Power.' Atharvaveda, III, 4, 2; IV, 8, 1; XI, 6, 15; XIII 3, 31; XVIII, 4, 31; Taittiriya Sanhita, II, 1, 3, 4; 6, 6, 5; VII, 5, 8, 3. Aitareya Brahmana VII, 23; and Jaimini Upnishad Brahmana, I, 4, 5.

†Ramayan, Griffith's Translation, book II, Ch. 10.

great kings severally named Ptolemy, Antigonos, Magas and Alexander ; and in the south (the realms of the) Cholas, and Pandyas, with Ceylon likewise, and here, too, in the King's dominions, among the Yonas and Cambojas, among the Nabhapantis of Nabhaka, among the Bhojas, and Pitinnikas, among the Andhras and Pulindas."

Yuan Chwang has described the wide conquests of King Harsa and his statements are generally supported by Banbhatta in his 'Harsa Charitra.' "The details of his conquest are not fully available. According to Yuan Chwang, he first 'proceeded eastwards, invaded the states which had refused allegiance, and waged incessant warfare until in six years he had brought the five Indias under allegiance." * The five Indias referred to are stated to be Svarastra (Punjab), Kanyakubja, Gauda (Bengal), Mithila (Darbhanga), and Orissa. Harsa also defeated the Lord of Valabhi in a battle in the west but, later on, restored to him his kingdom as a vassal, and even as his son-in-law.† The sovereign of Assam, Bhaskaravarman, had also sent presents to Harsa and a proposal for alliance, through his messenger Hamsvega.‡ And just as Harsa was the over-lord of the whole of Northern India, his contemporary, Pulkesin II, exercised his suzerainty over the whole of Southern India keeping the smaller kingdoms in subordinate alliance.

But the nature of these conquests essentially differed from those of our own times. In ancient India the conqueror (the king of kings) always

* 'Harsa,' p. 29.

† Ibid. p. 30.

‡ Ibid. n. 24.

treated the conquered kingdoms as held in subordinate alliance to him by the local kings and rulers, though the rulers of some of these petty states were required to be present at their overlord's court.* The suzerain respected the local laws and customs and never tried to introduce in their principalities those prevailing in the territory directly under his rule.† We find Emperor Harsa thus becoming "the centre of a group of subordinate kings who belong to his system and move round him as his satellites."‡ Thus the smaller kings did not completely lose their independence; they only offered allegiance to their overlord who was satisfied with this and allowed them complete independence. The subordinate kingdoms retained their own laws, customs, systems of administration, their own currency and coinage; and this is the most convincing proof of their not being annexed to the suzerain's kingdom. We thus find that there was a great difference in the sphere of direct authority of the Emperor and the sphere of influence, the former being his own kingdom directly administered by him while the latter included all his vassals and subordinate allies.§

There is another point to be borne in mind regarding the position or status of the smaller

* Ibid. p. 46.

Also 'Public Administration in Ancient India', p. 50.

† Gautam II. 2,20-21. Anandsramed. Also II-2-22. Dr. R. K. Mukerji. 'Local Government in Ancient India' p. 124. The king also saw that the local associations did not err from their own laws as established among them. Yajnavalkya, (I. 361); Vishnu (III-2) and Narada (X-2.)

‡ 'Harsa', pp. 38, 103-104.

§ Ibid. p. 37.

kingdoms or states. All of them did not enjoy the same status inside the Empire. There were some which were treated by the Emperor almost on a footing of equality, while others were mere vassals in subordinate alliance with their overlord. The whole empire represented an appearance in some respects akin to our present India in which the Government of British India has friendly alliances with some of the important Indian States on terms of equality, at least in theory, while others have sanads and charters from the Paramount Power. Again, all the kingdoms in ancient India did not enjoy the same form of government, Some were democracies while others were oligarchies or monarchies. At the time of Alexander's invasion, Sambastai, Sabarcae, the Kathanians, the Oxydrakai, the Adriastai, and the Malloi were all democratic states. Nyas was under the administration of 300 wise men.* Chanakya mentions many Oligarchies such as the Lichchivikas, Vrijikas, Mallakas, Kukuras, Kurus, and Panchals.†

It is beyond doubt that these several kingdoms of ancient India severally enjoying various forms of government, were never united in any one system under one ruler to form a unitary state. The states concluded with each other alliances, offensive as well as defensive, for colonisation and for furthering other common objects. Sometimes a weaker king formed an alliance with a stronger one and became the latter's subordinate ally, as the king of Kamrup did under

* Mc. Crindle. 'Ancient India, Alexander's Invasion', p. 292.

† 'Arthsastra', Book I. Ch. VII.

Harsa.* The treaties of alliance were made either on oath or on surety, the former of these being preferable as observed by Chanakya.† Communications between the various courts were kept through diplomatic agents. ‡

Sometimes the smaller states themselves found it advantageous to become integral parts of a bigger empire to reap the fruits of the resulting union. And it was mainly for this reason that Chandragupta had little difficulty in absorbing the states of Northern India within the Empire of Magadh, thus establishing an elastic centralised imperial system. But this centralisation did not mean loss of independence by the weaker allies, that is to say, there did not result any unitary state. Nor was there a federal system with clear demarcation of governmental authority between the central and the state governments. Indeed, our present political terminology contains no single suitable word which can correctly describe the character of that union, we can only call it as a sort of alliance in which the member states enjoyed greater powers than in a federation, but at the same time they were not absolutely independent of the Empire of which they formed integral parts. In every day life they had their own will, but on certain ceremonial occasions they undoubtedly felt their subordination in being tied to the chariot wheel of a powerful Emperor. The weakness of the smaller states did not allow them to shake off their dependence on the Imperial rule, nor did the geographical conditions, the long distances that lay bet-

* 'Harsa Charitra', Ch. VII. Beal, Buddhist Records, Hiun-Tsang's account.

† 'Arthashastra', Book I. Ch. VII.

‡ Ibid. Ch. 16. Agni Puran, Ch. 241.

Rigveda mentions Rajdūt or envoys. II, 127-9.

ween the different kingdoms and the lack of means of speedy transport, and the free and independent character of the people, allow the Emperor to exert his strength to the point of depriving these states of their local independence. "The essence of this imperial system was thus a recognition of local autonomy at the expense of the authority of the central government, which was physically unfit to assert itself except by its enforced affiliation to the pre-existing system of local governments." *

Harsa was the last Hindu Emperor who was able to keep the various parts of his empire in Northern India knit together. After his death, probably due to the weakness of his successors, the imperial system lost its strength and the local rulers resumed their independence.† And during the turmoil of the 8th and 9th centuries, Rajput families established their different kingdoms in Northern India. When Muslim invasions from the North-West began their havoc, the Rajput Rajas tried to form a military confederacy to ward off these invasions but their mutual jealousies could not for long maintain this confederate alliance.‡ Jai Chand of Kanauj, jealous of the growing strength of his brother-rajahs, ignominiously betrayed the Hindu cause and this betrayal enabled Mohammad Ghori

* 'Local Government in Ancient India', p. 10.

† "In the numerous states that existed all over India, we do not find a single ruler capable of organising them into an imperial union for purposes of common defence. The separatist and particularist tendencies were still too powerful to be suppressed." Dr. Ishwari Prasad, 'Medieval India', Introduction, XXXV.

‡ "The Rajputs idealised chivalry which led to the fierce wars among themselves. They could never rise to the lofty conception of national organization or unity." Ibid. XXXI.

to drive a wedge into the heart of the confederacy. The Rajput independence received a shock in the final defeat and capture of Prithvi Raj, the last fading flower of Rajput chivalry, and Muslim rule in India began with the accession of Qutbuddin Aibak in 1206.

(b) *Muslim India.*

Under Pathan Kings.—"The Islamic conquest did not prove an unmixed evil. It established imperial unity in place of the system of hostile states and taught the people to respect a single authority in the country." * But the absence of the rule of hereditary succession in the Pathan Theory of Kingship led to the principle of 'Might is Right,' and the throne of Delhi passed from one strong hand to another, thus resulting in short periods of several dynastic reigns. It was this very principle again which accounted for the springing up of independent provincial governors set up by the Afghan Kings of Delhi in their empire. The power of the central authorities at Delhi depended throughout this period (1206-1526) upon the personal character of the king. When Altamash succeeded Qutbuddin, he had to confront the Afghan rivals Eldos and Qubaicha as well as the Hindu princes and chieftains who had not lost hopes of regaining their independence. Besides these internal troubles the Mongol invasion of India in 1221 under Changez Khan further weakened his hands to consolidate his empire. Still Altamash conquered the distant parts of Northern India and compelled the local rulers to offer allegiance to the King at Delhi. But the outbreak

* Dr. Ishwari Prasad. 'Medieval India,' Introduction, XXXVI.

of rebellions at intervals in different provinces incapacitated even a strong monarch like Balban to evolve a peaceful system of government. It cannot, therefore, be said that during the three centuries of their rule the Afghan kings had completely succeeded in establishing a strong unitary state. Much of the power was left to the provincial governors who looked upon the Emperor only as one of their equals.

Alauddin Khilji was the first Afghan Emperor to undertake the conquest of the Deccan and thus establish his sway over the whole of India. He succeeded in defeating the local Rajput and other Hindu princes. But the weakness of his successors resulted in the disintegration of the empire which continued until Ghayasuddin Tughlaq (1320-25) established the rule of his dynasty. His successor Mahmud Tughlaq again tried to consolidate his empire and wisely contemplated the transfer of his capital from Delhi to Daulatabad in the Deccan to conquer Southern India and rule over it on the spot. But the failure of his expedition and several other administrative experiments again interrupted the work of imperial organisation. And in the time of the later Tughlaqs, the invasion of Timur (1398) weakened the power of Delhi and led to the establishment of local independent kingdoms in India, Malwa, Gujrat, Jaunpur, Bengal and Khandesh in Northern India, and the Bahmani Kingdom and the Kingdom of Vijayanagar in the Deccan. The Bahmani Kingdom was later on split up into five Muhammadan kingdoms of Berar, Bijapur, Ahmadnagar, Golconda and Bidar, under independent Muslim rulers.

In Northern India the disintegration that had

set in in the Afghan Empire marked the beginning of an era of weak kings who were involved in wars against the newly formed kingdoms. Bahlol Lodi and Sikandar Lodi once again tried to consolidate their empires. Sikandar's successor Ibrahim Lodi alienated the sympathies of the Afghan nobles, on whose indulgence his power mainly rested 'by attempting to govern them too much, and his promiscuous ill-treatment turned his own kinsmen against him.' Even his younger brother Jalal and his uncle Doulat Khan betrayed the Sultan and conspired with Rana Sangram Singh, the leader of the Rajputs, to extend an invitation to Babar to curb the power of the Sultanate at Delhi.

Under the Moghals.—With Babur's victory in the first battle of Panipat in 1526 began Moghal rule in India which lasted with vigour upto 1707. After Aurangzeb's death began the dismemberment of the empire and the consequent rise of the various rival powers. The first six Moghal Emperors succeeded in ruling over the country—except for a brief period 1540-1555 when the Sur dynasty occupied the throne of Delhi—with conspicuous success. The chief cause of their success was the principle of hereditary succession among the Moghals, unlike the Afghans. And only when Aurangzeb tried to cut at the root of this principle by setting aside the claims of Dara and Shuja, weakness in the empire set in and the later Moghals became powerless to control the provincial governors.

Of the Moghal Emperors it was left to Akbar to build up an all India Empire. By his conciliatory policy, by matrimonial alliances, and by religious toleration he succeeded in realising his

ambition, at least in so far as Northern India was concerned, after winning the allegiance of the Rajput princes. He evolved a highly centralised system of administration which unified India to an amazing extent, an achievement unparalleled in the preceding several centuries. The Emperor became 'the motive power of the entire administrative machinery' and it was to him that the provincial governors looked for guidance in day to day administration. It is true that the governors exercised considerable influence in their territories but the Emperor's 'firmans' had to be implicitly obeyed. The Emperor, by virtue of his power of appointing the provincial subedars or governors and assigning to them the provincial military quotas and by frequent transfers of the subedars and of forces from one suba to another maintained military rule which necessitated a centralised despotism. The central authority left the rural areas much to themselves. There was, therefore, something like local autonomy. The geographical units enjoying such autonomy were, however, so small and their activities were so purely municipal and social, that it would be more correct to say that the villages and small towns of the Moghal Empire enjoyed parochial self-government rather than local autonomy."*

The Hindu empires in ancient India comprised of local rulers and rajas who owed allegiance to the central authority but were more or less independent in their internal administration. The Moghal Empire, on the other hand, was highly centralised being divided into administrative provinces under governors (*nazims* or subedars)

*Sarkar. 'Moghal Administration,' p. 15.

order of officials, and by introducing the same court language and the same coinage and currency. The traders in their travels always felt themselves at home in a far off province though this political union did not result in an Indian nationality in the modern sense. The people, deprived of all share in the government of the country, only felt themselves as 'merely equal subjects of an empire'.

But the contribution of the Moghals to the cause of unity was very great. Even after the death of Aurangzeb when the provincial governors shook off their dependence on Delhi and the Empire was dismembered, they continued to govern, at least in theory, in the name of the Moghal Emperor, as for instance the Nawab Vizier in Oudh, Ali Vardi Khan in Bengal and the Nizam in Hyderabad. Only the Mahrattas in the South and the Sikhs in the Punjab did not recognise even this nominal authority of the Emperor, though Mahdaji Sindhia, when he tried to become supreme in Northern India, did for some time pretend to be the guardian of the imbecile ruler at Delhi. The East India Company, as is evident from the firmans and zimmans issued to them by the occupant of the Delhi throne, called themselves as the Emperor's servants.

In this way we find that about the middle of the 18th century India was divided into a large number of independent kingdoms under their own rulers, some of these still owing nominal allegiance to the weak and imbecile Moghal at Delhi, but virtually masters within their homes. Only among the several Mahratta rulers, who

was a loose kind of alliance for the primary purpose of self-defence and extension of territory. The several Mahratta rulers, though they professed to be subordinate to the Poona authorities, were practically independent in their states. It was with these rulers that the European trading companies had to deal in all commercial as well as quasi-political matters. When the victory at Plassey gave the East India Company a chance to acquire sovereign power in Bengal, Clive soon perceived the possibility of extending British influence throughout the whole country, in the name of the British Crown.

(c) Under the British.

The Development of Centralisation. In the development of a centralised system of administration in India we can note three stages, the first till 1773 when the provinces were absolutely independent of one another and subordinate only to the Company's governing body in London, the second from 1774 to 1833, during which time the beginnings were made in the direction of establishing a Supreme Government in India, and lastly the period immediately following 1833 when a highly centralised system was established in India.

The foundation of British rule in India laid at Plassey was further strengthened by the victory at Buxar in 1764 and the subsequent Treaty of Allahabad gave the Company the diwani rights in Bengal, Behar and Orissa. From 1765 to 1773 there was double government in Bengal. But during this period the East India Company had no concerted plan of action or even a settled policy to be pursued throughout their settlements in India. The Company formed three Presidencies

of Bengal, Madras and Bombay, 'each distinct from the others, and each absolute within its own limits. The President of each, who was also Commander-in-Chief of the Military forces of the Presidency, was to be responsible only to the Directors at home. As a natural corollary the armies of the three presidencies became as distinct and separate from each other as the presidencies to which they belonged, and the presidency army system was established.* Each presidency carried on its independent correspondence with the Directors, each kept its own finances, and each was independent and unfettered in its relations with the Native Rulers. Each had its own services and its judiciary. So that except that they were branches of the same Company there was no other close relation between them. When in 1748 the Directors appointed a Commander-in-Chief for all their forces in India the Presidencies must have considered it an infringement of their prescriptive rights over their armies.† But it should not be understood that the three Presidencies always looked upon each other as in no way bound by any ties. For in 1754 when the war with France broke out "the Madras Government, at its wits end for troops, appealed to the Government of Bombay for help. The appeal was promptly answered, and a force of 750 men was collected and despatched."‡ Similarly in 1757 the Madras Government readily despatched all available forces under Clive and Watson to Calcutta as soon as they were apprised of the Black Hole Tragedy. Still the Presidencies

* 'The Army in India and its Evolution,' p. 5.

† Ibid. p. 7.

‡ Ibid. p. 8.

jealously guarded their independent character and did not think of evolving a definite system of close alliance among themselves. This was undoubtedly a very unsatisfactory state of affairs which compelled Warren Hastings, in November 1773, to complain to the Court of Directors of the want of a suitable instrument of government for their possessions in India. He wrote: "The extent of Bengal and its possible resources, are equal to those of most states in Europe. Its difficulties are greater than those of any, because it wants both in established form and powers of government, deriving its actual support from the unremitted labour and personal exertion of individuals in power instead of the vital influence which flows through the channels of a regular constitution, and imperceptively animates every part of it. Our constitution is nowhere to be traced but in ancient charters which were framed for the jurisdiction of your trading settlements, the sales of your exports, and the provision of your annual investment. I need not observe how incompetent those must prove for the government of a great kingdom, and for the preservation of its riches from private violence and embezzlement".*

The necessity for such an instrument was increased by the state of the Company's servants in India who tyrannized over the people and carried on private trade much to the detriment of the Company's finances. And when the Company applied to the Home Government to allow them to raise

* Warren Hastings to the Court of Directors, November 11, 1773.

Keith, 'Speeches and Documents on Indian Policy',
Vol. 1, pp. 36-37.

a loan, Parliament passed the first of a series of Acts which have contributed to bringing India under one government. This was Lord North's Regulating Act of 1773. The most important provisions of this Act, from the constitutional point of view, were clauses VII-IX. These appointed a Governor-General and a Council of four members for the Presidency of Bengal. They also curtailed the independence of the factories at Madras, Bombay and Bencoolen, and gave over the latter some negative authority to the Governor-General in Council. It was provided that "it shall not be lawful for any President and Council of Madras, Bombay, or Bencoolen, for the time being, to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty with any such Indian Princes or Powers, without the consent and approbation of the said Governor-General and Council first had and obtained, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the orders from the Governor-General and Council might arrive ; and except in such cases where the said Presidents and Councils respectively shall have received special orders from the said United Company....." * Breach of this was made punishable with suspension from office by the Governor-General. They were also required to submit to the Governor-General

* Keith. 'Speeches and Documents on Indian policy', Vol. I, pp. 46-47 (Article IX of the East India Company Act).

This was an extremely important provision as a preliminary to bring the several presidencies together.

advice and intelligence of all matters relating to the government, revenues or interests of the Company within their jurisdiction, if not for his approval at least for his information. So that when the President of Fort William in Bengal, according to this Act, became Governor-General with certain powers of control over the other two presidencies whose heads still continued to be called Presidents, Madras and Bombay definitely became in some sense subordinate and in every way inferior in status to the Presidency of Fort William. Although the sphere of control to be exercised by the Governor-General over the Presidencies of Madras and Bombay was strictly limited, still the latter resented even this much of interference with their independence. When in 1775-76 the Government of Bombay entered into a treaty with the Mahratta chief Raghoba, the Governor-General and Council at once disapproved of this transaction of the Bombay Government and asked them to rescind it. Thereupon the Government at Bombay despatched their agent, Mr. Taylor, to England to protest against this action of the Governor-General and Council.* This was possible to do because the Act of 1773 still allowed to the Presidencies freedom of direct communication with the Directors. It is interesting to observe here that even Warren Hastings did not like to make undue interference in the transactions of the other Presidencies and he did not read in the Act any provision warranting such an interference. But he was forced to interfere as in his Council the majority led by Francis was still opposed to him. In a letter

* Keith, 'Speeches and Documents on Indian policy', Vol. I. p.72.

government of Bengal with the powers of general superintendence and control over the presidencies. Clauses XIX and XX of the Act raised in some respects the position of the presidencies of Madras and Bombay by giving them also councils. But even at that time each of the presidencies had its own Commander-in-Chief, although the Commander-in-Chief of India was to have precedence over those of the presidencies whenever the former had any occasion to visit the presidencies (clause XIX). Clauses XXXV and XXXVI further curtailed the powers of the presidencies of Madras and Bombay with regard to the declaring or carrying on of war or other negotiations with the country powers. And Lord Cornawallis, relying on the provisions of this Act, suspended from office Governor Holland of Madras when the latter happened to disagree with the former regarding Tipu's attack on Travancore, and himself taking command of the armies in that part of the Company's possessions he waged war against Tipu. This clearly demonstrated the subordinate position of the presidencies of Madras and Bombay. When in 1793 the Company's charter was revised it was provided that whenever the Governor-General was to visit any presidency he would supersede the Governor of that presidency. *

In the years 1800 and 1807 Parliament passed Acts which established supreme courts at Madras and Bombay thus giving these presidencies the same judicial powers as had been given to Bengal in 1773. This was also important from this point of view that since that time all provinces sooner or later got High Courts or Chief Courts

established in them and these Courts were not subordinate to any other judicial authority in India, but appeals from any of them could be preferred only in His Majesty's Judicial Committee of the Privy Council. When Wellesley arrived in India as Governor-General he perceived the the necessity of further increasing the power of the Governor General and Council, in all civil and military affairs throughout the Company's Indian possessions. In his letter of July 9, 1800, he wrote to the Court of Directors: "It is essential that this control should be extended to all matters in any respect connected with the unity, strength and stability of the British power in India."* He was an Imperialist and wanted to increase the Company's possessions in India. He came in conflict with the Mahratta Confederacy *vis-a-vis* the Moghal Emperor who was virtually in the hands of the Mahratta chiefs. His was a task which essentially required great strength in the central government which could not have achieved what it did, if the governments at Madras and Bombay had continued to remain independent. The defeat of the Mahrattas increased the credit of the Governor-General and Council. Thence onward all military, financial and foreign affairs definitely and more explicitly passed into the hands of the central government. And the subsequent relations of the presidencies of Madras and Bombay were very clearly summed up by Lord Wellesley in his letter to the Court of Directors (9 July 1800). Wrote he: "The two subordinate governments may be considered with relation to the supreme government as dependent states.

* Keith. 'Speeches and Documents on Indian Policy,' Vol. I. P. 191,

The nature of the control exercised over those governments corresponds, in many respects, with that exercised by the Crown with regard to the American and West Indian possessions".* The Act of 1813 increased the powers of the three councils of Bengal, Madras and Bombay and they were allowed to make articles of war, impose customs duties and other taxes.†

But in 1833 the process of centralisation was carried to its logical conclusion. The Governor-General of Bengal was to be styled 'Governor-General of India in Council.' Clause XXXIX of the Act of 1833 defined the new role of the Governor-General by providing that 'the superintendence, and direction, and control of the whole civil and military Government of all the said territories and revenues in India shall be and is hereby vested in a Governor-General and Counselors, to be styled 'The Governor-General of India in Council.''' The councils of Madras and Bombay were abolished and all legislative power was taken away from those presidencies which could only propose certain measures for law-making by the central Government in Bengal. The Council of the Governor-General was to consist of, among other members, one representative of each of the governments of Madras and Bombay. The Directors explained their intentions regarding the future relations of the subordinate governments of Madras and Bombay with the central government in their despatch No. 44 dated 10th December 1834, accompanying the Government of India Act 1833. They wrote to the Government

* Keith 'Speeches and Documents on Indian Policy,' Vol. I, p. 191.

† Montagu-Chelmsford Report, p. 36.

of India; "Heretofore you have been invested with extensive powers of superintendence over the legislation of the subordinate presidencies. But as these presidencies have had the right of legislating for themselves, your superintendence has been exercised only on rare and particular occasions. Now their legislative functions, with a reserve for certain exceptional cases are to be subordinate to the Supreme Government. The whole responsibility rests on you; and every law which has an especial reference to the local interests of any of the presidencies, and every general law in respect of its particular bearing and operation on such local interests, ought to be preconsidered by you with as deep and as anxious attention as if it affected only the welfare of the presidency in which you reside. You may, indeed, as we have already observed, receive from the subordinate presidencies suggestions or drafts of laws, and these it may frequently be expedient to invite. But in no instance will this exempt you from the obligation of so considering every provision of the law as to make it really your own, the off-spring of your minds, after obtaining an adequate knowledge of the case. We say this, knowing as we do how easily the power of delegating a duty degenerates into the habit of neglecting it, and dreading lest at some future period, under the form of offering projects of laws, the subordinate presidencies should be left to legislate for themselves, with as little aid from the wisdom of the Supreme Government as when the power of legislating was ostensibly in their hands."* The last sentence is amply characteristic of the centralising tendency that was on

THE HISTORICAL BACKGROUND

the increase in that period. The Directors thought it necessary to clarify the issue at such length for they complained that although the Supreme Government had already by previous Acts been empowered to supervise legislation, yet "In practice, however," continued the despatch, "the Supreme Government made little exercise of its superintending authority, and the result has been that even that little exercise of it has been generally made when it was too late to be made with real effect, namely, after the subordinate Government had taken its course; thus losing the character of control and responsibility, and retaining only that of *ex post facto* intervention, a sort of intervention always invidious, and in most cases nothing but invidious, because what was really done, however open to censure, was beyond the reach of recall or correction."* And the transfer of control over revenues of British India to the Governor-General in Council laid the foundation of the Central or Imperial system of financial administration which itself went a great way in centralising the whole administrative machinery and in divesting the governments of Bombay and Madras of their high status and making them even financially dependent on the will of the Governor-General in Council.† The Governor-General was also empowered to divide the presidency of Bengal into two, viz. that of Fort William in Bengal and the other of Agra, but this was repealed in 1835.

After twenty years the Company's charter was again revised in 1853 when the Company was

* Ilbert. 'The Government of India,' pp. 521-522.

† Ambedkar. 'The Evolution of Provincial Finance in India,' pp. 5-8.

deprived of all trading powers and was made an absolutely ruling corporation. Two very important constitutional changes were effected by the Government of India Act, 1853, which need be mentioned here. Firstly the Governor-General was released from the additional and embarrassing duty of administering the presidency of Bengal for which a separate Lieutenant Governor was appointed. This was very important from the view-point of creating a strong central government and allaying the fears of the other two presidencies of Madras and Bombay that they were mere appendages to the Presidency of Bengal so long as the Governor of Bengal continued to be Governor-General of British India. Secondly, the Council of the Governor-General was expanded for legislative purposes by the addition of one official representative of each of the four provinces of Bengal, Madras, Bombay and Agra, as well as two judges of the Calcutta High Court. The official representation of the provinces in this first Indian Legislative Council is an important point as it was an effort to diminish the disadvantages of the highly centralised system established in 1833. And though the centralising of administration had by this time been carried to a very great extent in theory, still in practice much power was left to the Provinces which in the important matter of collection of revenues and the work of every day administration showed signs of independence.*

This arrangement lasted for less than five years when the Mutiny broke out.† Towards the

* Ambedkar. 'The Evolution of Provincial Finance in India,' p. 24.

† By this time Dalhousie had completed the map of British India.

close of this tremendous political upheaval, and while its ashes were still smouldering, Her Majesty's Government definitely put an end to the rule of the Company and transferred the responsibility of administering British possessions in India solely to Parliament.

Under the British Crown as a Complete Dependency.—By the Government of India Act, 1858, the British Crown took the responsibility of ruling India as Her dependency. Three years later, Parliament passed the Indian Councils Act of 1861. The bill was moved in the House of Commons by Sir Charles Wood who, in his speech, emphasized the fact that "The executive alone, even with the assistance of the legislative member, was incompetent to perform the increased duties which were created by the extension of territory."* Therefore, while creating an enlarged legislature formed by the addition of a certain number of additional members under the Governor-General for the whole of India, this Act now reversed the policy of centralising legislation by restoring to the presidencies of Madras and Bombay legislative powers which they had been deprived of by the Act of 1833. The Governor-General was also empowered to create, by proclamation, legislative councils for North West Provinces and the Punjab, whenever he should deem it proper, and these provinces were given such councils in 1886 and 1897 respectively. He was also authorised to create, out of the old ones that had been formed only haphazardly, new provinces for purposes of administrative efficiency and to give them also legislative councils after obtaining Her Majesty's

*Keith. 'Speeches and Documents on Indian Policy,' Vol. II. p. 9.

sanction. These provisions subordinated the authority of the provinces to that of the Governor-General in Council. But the Act also reversed the policy of centralisation begun in 1773 and completed in 1833.

But the legislative authority of the various provincial legislatures was evidently limited and they were not to be sovereign legislative bodies as the Act did not contemplate the formation of independent provinces in India. "No line of demarcation was drawn between the subjects reserved for the central and local legislatures respectively; but the previous sanction of the Governor-General was made requisite for legislation by the local legislature in certain cases, and all Acts of the local legislature required the subsequent assent of the Governor-General in addition to that of the Secretary of State, and were made subject to disallowance by the Crown."* The necessity of establishing local legislatures was clearly indicated in the despatch No. 14 dated India Office London, August 9, 1861, to His Excellency the Governor-General of India in Legislative Council. It said: "It is advisable that the several legislative Councils should undertake, as far as possible, the necessary legislative business for the territories under their respective jurisdiction. The circumstances of different parts of India are widely different, and may, even under the same general head of administration, require widely different measures of a practicable character: and it will be no ground for condemning a measure on any particular subject passed for one presidency that it differs, in some respects, from

is a subject which should be left to the General Council.”*

Section 43 of the Act further restricted the powers of the local legislatures by providing that they could not enact laws or make regulations, without first obtaining the sanction of the Governor-General, on any subject:—

- (1) Affecting the Public Debt in India, or the Customs Duties or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such government:
- (2) Regulating any of the current coin, or the issue of any bills, notes or other paper currency.
- (3) Regulating the conveyance of letters by the Post Office or messages by the electric telegraph within the presidency.
- (4) Altering in any way the Penal Code of India, as established by Act of the Governor-General in Council, No 42 of 1860.
- (5) Affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India.
- (6) Affecting the discipline or maintenance of any part of Her Majesty's military or naval forces.
- (7) Regulating patents or copyright.
- (8) Affecting the relations of the Government with foreign princes or states.†

*Keith. 'Speeches and Documents on Indian Policy', Vol. II, pp. 18-19.

†Ibid. Vol. II, pp. 40-41.

There were two more restrictions placed upon the powers of the local legislatures to be created by the Governor-General. Firstly, all laws passed by them were to receive the Governor-General's assent who could also reserve any of them for Her Majesty's assent. By Section 22 all laws and regulations passed by the Governor-General in Council were to control and supersede all those made in the provinces. Secondly, in financial affairs they were all very much handicapped as their budgets were to be submitted to the Governor-General who was himself dependent on the Secretary of State in Council. Whereas the first eight restrictions were those which have been imposed upon almost all states or provincial governments in all federations, the last two were such as are placed on municipal corporations. So that the Governors in Council and the Lieutenant Governors and their legislative councils were not at all independent bodies in the sense in which the states in U. S. A. are.

Again, the powers of the Governor-General and his legislative council were also restricted in as much as the laws passed by them could be annulled by Her Majesty's Government. It was so because Parliament was the body responsible for the administration of India and the Government of India was, till then, only a subordinate branch of the Home Government and did not enjoy the powers of a sovereign ruler. In the expenditure of revenue, too, the Government of India was subordinate to the Secretary of State in Council who was responsible to Parliament. These restrictions on the powers of the Government of India *ipso facto* further delimited the powers of the provinces and did not allow free

growth of an Indian federation.

Theoretically these restrictions placed upon the powers of the Government of India and the governments of the presidencies and provinces were great but in practice sufficient latitude was granted them. But it is true that no definite attempt had been made to demarcate the spheres of jurisdiction of the Central and Provincial Governments as in a true federation.* The decentralising tendency evident from the provisions of the Act was dictated by the obvious impracticability or rather the impossibility of ruling the vast Indian Empire from Calcutta or any other centre. But the restrictions on this decentralisation, in spite of Her Majesty's proclamation of 1858, were a necessary corollary of the position of India then as a dependency of the British Crown, as she was considered to be.

As to the financial arrangement, though the question did not receive the importance in 1861 that it ought to have done, it could not be postponed indefinitely, because of the policy of an absolute financial centralisation that had set in. Prof. Ambedkar has correctly described the situation by saying that "the provinces behaved as though they were the lawful authorities charged with the responsibilities of Government. The spirit of independence bred insubordination, and some of the provinces, particularly Bombay and Madras, endeavoured to resist the attempts of the Government of India to tax the people under their jurisdiction when the cost of the Mutiny compelled it to levy fresh burdens".† But it was

* Joint Report, p. 40.

† Ambedkar, 'The Evolution of Provincial Finance in India,' p. 24.

continued for nearly a decade when in 1870 Lord Mayo, the then Viceroy, outlined his scheme of financial decentralisation and the Government of India Resolution of December 14, enunciated it. According to it the provinces were to administer the services connected with the departments of Jail, Police, Registration, Education, and Medical, for which they were granted a fixed sum of Rs. 4,68,87,110 in a lump sum together with all receipts from these departments. Of this arrangement Prof. K. T. Shah speaks: "Not a radical change in the principle of Government, this nevertheless made a considerable and welcome step forward. Once taken, there was no going back on the principle of centralisation; and it was only a question of time when it would be metamorphosed into a principle of federalism".*

In 1877 Lord Lytton took the next forward step when he transferred to the provinces the administration of the services of Law and Justice, Land Revenue, Stamps, Excise, Stationery, and Printing, and General Administration. To meet the increased expenditure they were allowed a share in the revenues derived from Excise, Stamps, License tax, Law and Justice fees, and the income derived from minor railways. "The rates and items of taxation in these as in other departments were settled by the Imperial Government alone; but the admission to a share in the revenues was a distinct step forward on the road to federalism."† This placed at the disposal of the local governments a sum of Rs. 17½ crores in all. This arrangement was revised every five years with the inevitable result that

* Shah. 'Federal Finance in India,' Ed. 1929. p. 87.

† Ibid. p. 89.

the provinces every time got a large sum to spend.

The Act of 1861 was further amended in 1892, but this did not involve any change in the relations between the provincial Governments and the Government of India. The Indian political unrest of the period 1905-1908 was followed by the passing of Government of India Act of 1909 which embodied constitutional reforms now known as Morley-Minto Reforms.

Morley-Minto Reforms and Lessons in Self-Rule.—

The Morley-Minto Reforms did not constitute any new departure in Britain's policy of governing India. They were 'essentially of an evolutionary character; they were a natural extension of the previously existing system.....but in any case they cannot justly be described as embodying any policy, the change was one of degree and not of kind.'* This statement of Mr. Montagu and Lord Chelmsford depicts the true character of these reforms.

The Governor-General was authorised to create Legislative Councils in those provinces under Lieutenant Governors, which had not yet been given such Councils. The control of the Secretary of State for India in Council was not at all relaxed and consequently the Government of India did not lose its firm hold on the provincial administrations. One illustration will suffice to indicate how far the provinces were subordinate to the Central Government. When the Bombay Government submitted its proposals to the Government of India regarding certain changes in the teaching staff, the latter Government rejected the proposals. The Bombay

* Joint Report, p. 2.

Government then placed the proposals before the Local Council which sanctioned them and the Government again approached the Government of India with this additional strength of the Council behind its proposals. But the Government of India and the Secretary of State reprimanded the Bombay Government for these tactics and Lord Crewe, the then Secretary of State for India, thus described the subordinate character of the Provincial Governments. He wrote: "There is for India one system of administration, and one alone; and it is only by bearing steadily in mind this fundamental principle that the solidarity of the administration can be kept unimpaired and those disruptive tendencies controlled which must always form the chief risk of decentralisation of authority."* The Provincial governments were also handicapped in their work by not being allowed any financial control or financial autonomy. They chafed under the existing arrangement which made them entirely dependent upon the doles paid to them out of the common treasury of the Government of India who firmly held the purse strings and did not allow the provinces that freedom in finances which is so vital to the healthful growth of a country. The Commission on Decentralisation, which submitted its report in 1909, although it recognised the validity as well as the necessity of the separation of Indian and provincial finances, which must result from the enhancement of the powers of provincial administrations, failed to make any effective recommendation to that end.

The despatch of 15th August 1911, which

* Joint Report, p. 58.

were not all on a footing of equality. The three presidencies of Bombay, Madras and Bengal, formed before the Regulating Act of 1773, still retained some remnants of their original independent character. They had governors at their heads, who were chosen from amongst public men of England, were appointed by His Majesty's Government and were assisted by an executive council. They had the right to appeal to the Secretary of State against the decision of the Governor-General. They could correspond directly with the Home Government and were less subordinate in administrative matters to the Government of India. Then there were four Lieutenant-Governorships, constituted at different periods, United Provinces of Agra and Oudh (till 1901 called North-West Provinces) formed in 1835, the Punjab in 1859, Burma in 1897 and Behar and Orissa in 1912. Bengal upto 1912 was a Lieutenant Governorship with specially large powers. These four provinces had at their heads Lieutenant-Governors appointed by the Governor-General from amongst the Civilians in India, whose service was at least ten years in this country. The extent of their authority was defined by the Governor-General whose decision was final; only one of them, Behar and Orissa, had an Executive Council yet this did not in any way enhance its status *vis-a-vis* the Government of India. The Lieutenant Governors could neither correspond directly with the Secretary of State nor could they appeal to him against the decision of the Governor-General. In fact, in every day administration they felt the hand of the Central Government more tightly than the three presidencies.

Next in importance came the four Chief Commissionerships of Assam, Central Provinces, North-West Frontier Province, and Baluchistan. Assam, originally formed in 1874, was amalgamated with the eastern part of Bengal in 1905, but reconstituted into a separate province under a Chief Commissioner in 1912. Central Provinces were formed into a Chief Commissionership in 1861 and Berar was amalgamated with them in 1903. Baluchistan was formed into a separate province under a Chief Commissioner in 1817, and North-West Frontier Province, separated from the Punjab in 1901 by Lord Curzon and placed under a Chief Commissioner. Of these four provinces, Assam and Central Provinces were more self-supporting, and situated as they were in a comparatively safe position they were given large powers, often as wide as those of the Lieutenant Governorships, and when they were given legislative councils their status practically became the same as that of the provinces under Lieutenant Governors. The remaining two, Baluchistan, and North-West Frontier Province, situated as they are in close proximity to Afghanistan and Persia and in the neighbourhood of unfriendly tribal country, occupy a distinctly important strategical position. They are not self-supporting even to-day. Their Chief Commissioners were, and even now are, only Agents to the Governor-General whose authority over them is final. They do not enjoy any administrative independence whether in theory or in practice and have no legislative councils.

Besides these provinces, the minor administrations of Coorg, and Ajmere-Merwar were under the control of the resident at Mysore, and the

Agent to the Governor-General for the states of Rajputana, respectively.

As for financial arrangements, another step taken in 1904 to establish divided heads of revenue whereby the provincial governments received all incomes from certain sources and part incomes from others, together with lumpsum assignments from the Central Government for specific purposes, proved completely unsatisfactory. The assignment system created provincial jealousies and grave inequalities as it did not follow any principle whereby all provinces could get their share on an equitable basis. It was this state of affairs which induced the late Mr. G. K. Gokhale to insist, in his evidence before the Welby Commission and the Decentralisation Commission, on the need of organising Indian finances on a federal basis.*

Indeed, even the Government of India realised the gravity of financial situation and accordingly they made in 1911 a new financial settlement. They abolished the assignment system and in its place completely provincialised certain heads of revenue, e. g. forest revenue and expenditure in all provinces; and excise entirely in Bombay and upto $\frac{3}{4}$ in the Central and United Provinces; half of the land revenue in the Punjab and $\frac{5}{8}$ of it in Burma. †

Six years later, while the Great War was still going on, the Secretary of State for India, Mr. E. S. Montagu, made the most memorable announcement in Parliament on August 20, 1917, embodying the policy of His Majesty's Government with regard to the future administration of

* Shah. 'Federal Finance in India', p. 98.

† Ibid. pp. 98-99.

India. The announcement stated : "The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire ".*

In the meanwhile very great changes had taken place which materially altered the international position of India. In the Imperial War Conference of 1917, Resolution VII declared that at all future Conferences India should be fully represented. Resolution IX recommended that the right of the Dominions and India should be recognized for a voice in the foreign policy and foreign affairs of the Empire, and Resolution XXII stated: "That the Imperial War Conference, having examined the Memorandum on the position of Indians in the Self-Governing Dominions presented by the Indian representatives to the Conference, accepts the principle of reciprocity of treatment between India and the Dominions and recommends the Memorandum to the favourable consideration of the Governments concerned."† Accordingly at the Imperial Conference of 1918 Sir S. P. Sinha (afterwards Lord Sinha) represented India and he succeeded in getting the principle underlying the resolution of reciprocity of treatment accepted unanimously. India was also admitted to the League of Nations and she was allowed to affix her signatures to the treaty of Versailles. All these events coupled

* Joint Report, p. 1.

† Keith. 'Speeches on Indian Policy,' Vol. II. p. 133.

with the recommendations of the Montagu-Chelmsford Report modified India's position within as well as without the British Empire, and she was no longer considered to be a dependency. It was undoubtedly this change in the international position of India which directly influenced her internal administration.

On the Road to Responsible Government.—The formulas which Mr. Montagu and Lord Chelmsford enunciated in their report for the carrying out of the new policy were four, *viz.*

- (1) "There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control." (p. 123 of the Report).
- (2) "The provinces are the domain in which the earlier steps towards the realization of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative, and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities." (p. 124 of the Report).
- (3) "The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in

the provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased." (Ibid. p. 124).

- (4) "In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and provincial Governments must be relaxed." (Ibid. p. 125).

This new departure in the policy of governing India was clearly distinct and substantial. The Reforms introduced in 1919 were embodied in the Government of India Act of that year. (9 and 10 Geo. 5, Ch. 101).

The Preamble to the Act, among other objects, says, "And whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities," etc. etc.

This Act begins with the constitution of local governments and thus recognises the great and supreme necessity of reversing completely the process of centralisation begun in 1833. The Act, without entering into the details of administration, only sets out certain principles which were to be embodied in the Rules made for the purpose. Section I, subsection (1), provided for the classification of subjects to be assigned definitely to the provinces whose governments were to be placed in charge of their administration. It also provided for the allocation of revenues or other

moneys to the provincial governments, thus recognising the necessity of financial decentralization accompanying administrative decentralization. Section 2 further empowered the provincial governments, to raise loans on the security of allocated revenues without interference from the Secretary of State. These two sections form the whole crux of the Reforms of 1919 and the governmental machinery set up under the Act. The administrative details will now be taken up.

(a) *Provincial Governments.*

The revised system of provincial governments was introduced at first only in eight provinces, *viz.* the three presidencies of Fort William in Bengal, Fort St. George (Madras), and Bombay, and the five provinces known as United Provinces, the Punjab, Behar and Orissa, the Central Provinces, and Assam. The remaining territories, comprising the North-West Frontier Province, British Baluchistan, Ajmer-Merwar, and Coorg were left almost unaffected by the new provincial system of administration (*vide* Section 3 of the Act).

All the eight provinces, enumerated above, were each placed under a Governor in Council, and they were all to be treated alike with this difference only that whereas the Governors of the three presidencies, *viz.* Bengal, Madras, and Bombay, were to be appointed directly by His Majesty's Government alone (practically from amongst publicmen in England) those of the other five provinces were to be appointed in consultation with the Viceroy, this being a device possibly for providing for the appointment of I. C. S. men to these posts, although there was no bar to the

appointment of non-civilians, as on at least three occasions non-civilian Indians have been appointed as Governors * The powers of the Governors were all alike in the case of the eight provinces.

Enlarged legislative Councils were given to all the Governor's provinces and their minimum strength was fixed by the First Schedule of the Act. The composition of the various provincial legislative councils is given in the following table.

Name of the Legislature.	Total Max.	Total Min.	Elected.	Muslim.	Non-muslim.
Madras	127	118	98	13	85
Bombay	111	111	86	27	59
Bengal	139	125	113	39	74
United Provinces	123	118	100	29	71
Punjab	93	83	71	32	39
Bihar and Orissa	103	98	76	18	58
Central Provinces	70	70	53	7	46
Assam	53	53	39	12	27
Burma	101	101	78	...	78

Each Governor was to be assisted by an Executive Council the strength of which varied from 4 to 2 according to the size and importance of the province.

The Devolution Rules made under Section 1 of the Act placed certain subjects, e. g. Law and Order, Land Revenue, Education, Industries,

* The three cases were of Lord Sinha in Behar and Orissa, the Hon'ble Mr. S. B. Tambe as Officiating Governor in the Central Provinces, and the Hon'ble Sir J. A. Maung Gyi as Officiating Governor in Burma. The case of the Nawab of Chhatari who officiated as Governor of U. P. on the demise of Sir Alexander Muddiman does not come in this category as he being at that time the Senior Member of the Executive Council, *ipso facto* officiated as

Agriculture, etc., in relation to the functions of Government under the provincial governments, and such other subjects of all India importance as Railways, Post and Telegraphs, Defence, Foreign Relations, Relations with Indian States etc. under the Government of India.

Over the Provincial subjects the powers of the local legislatures were, in general, provided for in Section 10. Sub-section (1) of this Section said: "The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province." Sub-section (3) delimited the powers of local legislatures by providing that they could not take into consideration any law:—

- (a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under the principal Act; or
- (b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty, or
- (c) Affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces; or
- (d) affecting the relations of the government with foreign princes or states; or

- (e) regulating any central subject, or
- (f) regulating any provincial subject which has been declared under the principal Act to be, either in whole or in part, subject to legislation by the Indian legislature, in respect of any matter to which such declaration applied ; or
- (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or
- (h) altering or repealing the provisions of any law which, having been made before the commencement of this Act by any authority in British India other than that local legislature, is declared by rules under the principal Act to be a law which cannot be repealed or altered by the local legislature without previous sanction ; or
- (i) altering or repealing any provision of an Act of the Indian Legislature made after the commencement of this Act, which by the provisions of that Act may not be repealed or altered by the local legislature without previous sanction."

Provincial legislatures were also prohibited from enacting any law affecting any Act of Parliament.

Still, within the sphere of administration over provincial subjects, the local legislatures were given very wide legislative powers without interference by the central government. This was made still clearer by a further division of the provincial subjects into (i) reserved subjects, which were to be administered by the Governor acting

with his executive councillors, and (ii) transferred subjects, administered by the Governor acting with his ministers. The ministers, chosen as they were from amongst the elected members of the Council, were responsible to the legislature which could remove them by an adverse vote. Clearly, therefore, in the transferred subjects the Governor-General in Council could exercise powers of superintendence, direction and control only for such purposes as were specified in the rules made under the Act. In practice this control was extremely limited and exercised on perhaps very few occasions and that too in connection with matters affecting all India services. Only in the sphere of reserved subjects the Act contemplated interference by the Governor-General of India or the Secretary of State, to any appreciable extent.

Another important departure made was that the old previous sanction rules were greatly relaxed and now previous sanction is required only for (i) laws made by any authority in British India before 1861 and not exempted by the Governor-General in Council as not requiring previous sanction, and (ii) laws passed after 1861 and specified in the schedule to the Local Legislatures (Previous Sanction Rules) as requiring previous sanction of the Governor-General.

Before 1919 the financial system in British India was anything but satisfactory. And with the division of functions between the Government of India and the provincial Governments, section 2 of the Act of 1919 provided for the allocation of revenues to the two sets of governments. The Committee appointed under the chairmanship of Lord Meston, took the matter into consideration. It abolished the unsatisfactory system of divided

heads of revenues, allocated all incomes derived from the provincial subjects to the provincial governments and all incomes derived from the central subjects to the Government of India. So that of the divided heads income from Land Revenue, Excise, Irrigation, and Stamps were allocated to provincial governments, while Customs, Railways, Salt and Opium were given to the Government of India. The other sources remained with the central or provincial governments, as before the passing of the Act. But this distribution of finances, though it removed most of the previous defects of financial administration, revealed that basing the estimates on the figures of the budgets for 1920-21, the expenditure of the Government of India was much in excess of its income, and the resources of revenue allocated to it were capable of future expansion, though not of immediate expansion. On the other hand, the income of the provincial governments was in excess of their expenditure at that time and their resources of revenue were not capable of very great expansion. The immediate deficit in the central budget was, therefore, recommended to be made up by means of provincial contributions which were fixed, almost arbitrarily by taking into consideration the needs and progress of the provinces, on a certain percentage calculated on the basis of the immediate increase in the spending power of the provinces, which resulted from the new allocation of revenues. The total increase in the spending power of the several provinces was calculated to be 1850 lacs of rupees in 1921-22, distributed thus :— Madras 573 lacs, Bombay 93, Bengal 104, United Provinces 397, Punjab 289, Burma 246, Bihar and Orissa 51, Central Provinces

52, and Assam 49, while the total deficit in the budget of the Central Government, for the same year was estimated to be 983 lacs.

The Meston Committee recommended that while the Government of India should try to cut down its expenditure to the level of its income, the provinces should make contributions to the Central Government till the latter's deficit was made up. Though these contributions were to decrease from year to year, still in six years the provinces actually contributed to the Government of India large sums of money which stood in the way of their meeting the increased demands in most of the nation building departments placed in the charge of ministers. Only in the case of the province of Bihar and Orissa, the Meston Committee, considering it to be the poorest of all the provinces, exempted it from making any contributions to the Central Government. The following table* indicates the sums contributed by the several provinces :—

(the figures are in millions of rupees).

Province,	Contributions paid in the financial year.						
	1921-2	1922-3	1923-4	1924-5	1925-6	1926-7	
Madras	.. 34.8	34.8	34.8	34.8	22.198	16.519	
Bombay	.. 5.6	5.6	5.6	5.6	3.4	2.8	
Bengal	.. 6.3	(contributions were wiped off after 1921-2)					
United Provinces of Agra and Oudh	.. 24.0	24.0	24.0	24.0	18.383	15.085	
Punjab	.. 17.5	17.5	17.5	17.0	11.384	8.575	
Burma	.. 6.4	6.4	6.4	6.4	4.455	5.025	
Bihar and Orissa	.. nil	(No contributions laid, the province having been considered as the poorest).					
C. P. and Berar	.. 2.2	2.2	2.2	2.2	1.3	2.2	
Assam	.. 1.5	1.5	1.5	1.5	.9	1.5	
Coorg	.. nil	nil	nil	.012	.012	.012	
Total	.. 98.3	92.2	92.2	92.2	92.012	51.712	

* Statistical Abstract for British India, Sixth Issue, p. 220.

sufficient to meet that expenditure, for irrigation works, for relief works in times of famine, for financing Provincial Loan Account, and for repayment or consolidation of the loans raised under these rules.*

But the finances of the provinces, although each of the Governors' provinces was allowed to create a finance department of its own, remained mixed up with those of the Government of India who continued to keep provincial balances and a check over the provinces through the Audit Department.

The Enquiry Committee set up in 1924 to investigate into the working of the Reforms of 1919 and to make recommendations for further advance by making rules, but without any amendment of the Act, submitted majority and minority reports. The former report only recommended the removal of certain defects by rule making, but the latter definitely recommended the grant of almost complete financial, legislative, and administrative independence to the provinces in all provincial subjects. This would have given the provinces full provincial autonomy which is a necessary step to the establishment of an Indian federation. But this report did not find acceptance with the Government of India.

(b) The Central Government.

Though no responsibility was introduced into the Central Government and consequently the control of the Secretary of State remained almost unreduced, the Central Legislature was made bicameral, the lower house called the Legislative

*Ambedkar. 'The Evolution of Provincial Finance in India.' p. 246.

Assembly and the upper house named the Council of State. Each of them was composed of members directly elected by the electors, each province having been assigned a fixed representation, and of nominated members.

The following table shows the composition of the Legislative Assembly, —

Provinces	Total elected.	Muslim.	Non- Muslim.	Others inclu- ding Europeans, Land-Holders, etc.
Madras ...	16	3	10	3
Bombay ...	16	4	7	5
Bengal ...	17	6	6	5
United Provinces...	16	6	8	2
Punjab ...	12	6	3	3 including 2 sikhs.
Behar & Orissa ...	12	3	8	1
Central Provinces	6	1	4	1
Assam ...	4	1	2	1
Ajmer & Merwar ...	1	...	...	...
Delhi ...	1	...	...	...
Burma ...	4 (of whom 3 were non-Europeans and 1 European.)	...	...	...
Total	105	30	48	21

The maximum strength of the upper house or the Council of State was fixed at 60 of whom 34 were to be elected non-officials, and of the remaining 26 not more than 20 were to be officials. The elected seats were thus distributed, Madras 5, Bombay 6, Bengal 6, United Provinces 5, Punjab 3, Bihar and Orissa 4, Central Provinces 1, Berar 1, Assam 1, Burma 2. Of these 34 members 10 were to be Muslims.

In this way each of the houses of the central legislature was composed of representatives from

the provinces, whose number varied according to the size and importance of the provinces. The powers of the central legislature were widened, but whatever part of the control of the Secretary of State over the Government of India was retained, hampered the independence of that legislature.

The Governor-General in Council could, after obtaining an expression of opinion from a Governor's province, and after having obtained the sanction of the Secretary of State, place a part of that province under a deputy governor. He could also, under similar conditions, reshuffle certain parts of provinces. He could also similarly declare any territory within British India to be a backward tract and withdraw from that territory all or part of the provisions of the Act of 1919.

The Government of India was also empowered to administer all territories of British India not included within the eight governors' provinces.

All the provisions of the Act of 1919 as enumerated above made a great advance on the Morley-Minto Reforms of 1909, still they left much ground to be cut before India was placed on the status of a full fledged federation. Two points here deserve to be noted. Firstly, no attempt was made to incorporate Indian States within the new system of administration beyond creating the Chamber of Princes to deliberate on such points as were common to their territories and British India, thus sowing the seeds of joint action on behalf of the Indian States. The Indian delegation to the League of Nations or Imperial Conferences also consisted of an Indian Prince who was considered to represent British India as much as he represented his own order. This was

assuredly a move in the direction of interesting the Indian States in such matters as concerned India as one unit in relation to all international affairs.

Secondly, there was no great relaxation of the general powers of superintendence and control by the Secretary of State over the administration of India and this definitely excluded the possibility of relaxing the control of the Central Government over the provinces. A convention was, however, recommended by the Joint Committee of Parliament that where the local legislature and the non-responsible executive agree, the superior control should not ordinarily be exercised even in respect of reserved subjects.

Statutory Commission.

In 1927 the Conservative Government under Mr. Baldwin appointed a Parliamentary Commission, contemplated under the Act of 1919, under the chairmanship of Sir John Simon to investigate into the working of the Act and to make recommendations for further advance or restriction. Shortly after that another Committee was appointed under the chairmanship of Sir Harcourt Butler to report on the relations of the Indian States with the Government of India. As desired by the Simon Commission the terms of reference of the Commission were widened by the Labour Government of Mr. Ramsay Macdonald to include within their enquiry the question of the relations of Indian States with the Indian Government.

The report of the Simon Commission, submitted to His Majesty's Secretary of State for India in June 1930, was adversely criticised by all

Indian politicians. It was, in fact, condemned even by the moderate section of public opinion. The report, though it undoubtedly favoured the creation of an All-India federation, opined that this ideal was only a remote speculation. However, during the discussions at the Round Table Conference in London (November 12, 1930—January 19, 1931) the delegates of the Princes, of British India, and of all the three political parties in England unanimously carried a resolution favouring the immediate establishment of an All-India federation. The ready response of the Indian Princes gave an entirely new orientation to the immediate solution of the Indian problem and made new converts to the idea of federation, notable among them the rt. Hon'ble V. S. Srinivas Sastri and Lord Reading. Except Mr. M. A. Jinnah who expressed certain misgivings regarding the feasibility of a federation including the Princes, the immediate establishment of such a federation was accepted by all, and the British Parliament agreed to implement the work of the Conference.

During the two years 1927-29 several non-official attempts were also made to draft schemes for incorporation into the future constitution of India. All these shall now be referred to in the succeeding chapters in their proper perspective.

to contribute to the prosperity of the land. The difficult nature of the problem is further enhanced by the impracticability of following precedents because no precedents of a proper and suitable nature are available.

And every one of these problems is bound to affect the question of an Indian federation. Should there be a federation or should there not be? And if there should be, of what type?

1. The Physical Basis.

Separated from the rest of the world by lofty and impassable mountain barriers on her North, North-East, and North-West, and on the remaining sides by the sea, India occupies a naturally protected place on the globe. The country lies half in the torrid and half in the temperate zone, between 5 degrees of North Latitude and 37 degrees of N. L. and between 67 and 99 degrees East Longitude. The total area is, 1,802, 192 square miles, the greatest length from Nanga Parbat to Cape Comorin being about 2,000 miles and greatest breadth, from Sukkur to East of Assam, almost the same. Her land frontier is 3,700 miles, of which 2,000 miles is on the North, 500 miles on the North-West, and 1,200 miles on the North-East. Though separated from the world, her internal barriers, mountains like the Vindhyas, the Satpuras, the Ghats and the Nilgris, and rivers like the Ganges and the Brahmaputra do not put any hindrances in the internal communications but they allow people on both their sides to freely mix among themselves. And while the great rivers fed by the Himalayas and forming the great Indo-Gangetic plain, impart to Northern India a character distinct from the Deccan and the

Coasts, thus giving to the various parts of the country different features which keep the country as separate administrative units, there are strong unifying influences which keep it traditionally one, making one part dependent upon another. The religious pilgrimages, the economic factors, and the national characters are all factors which, despite the several dissimilarities of the different parts of the country, keep it as one vast political whole.

The different climates, from extreme cold in the northern mountain region to extremely hot in the south, and the various kinds of soils have enabled Indians to grow a very large variety of agricultural products in the different parts to supply the needs of the whole country. So that, though to a casual observer India might seem a mass of heterogeneous elements, it is traditionally, economically and nationally one vast sub-continent whose parts are interdependent upon each other.

At the census of 1921 the population of India was 318, 942, 480. From several points of view these people in different parts of the country differ from one another. They speak different languages, follow the tenets of different religions, pursue different occupations and are at different stages of development, economically and intellectually. These curious characteristics are further marked by differences in one and the same part of the country. That is to say, there is not a single state or province where we may see a compact population, *i. e. people speaking only one language* (sometimes the many dialects of a language being very confusing), following one religion and one occupation.

At different periods of her history, the Vedic,

the Post-Vedic, the Muslim, and the Moghul, and lastly the British, rulers of India have tried to keep the country under their rule. Their efforts have met with varying degrees of success, the greatest credit belonging to the British who have succeeded in fusing the seemingly dissimilar provinces into one political unit, and the duration of their policy has now reduced most of the disintegrating tendencies and forces to a minimum.

2. The Communal Question.

One of the most difficult problems that confront those who attempt to frame a constitution for India is that of solving the communal *vis-a-vis* the religious question. And this comprises not only the religious basis of the communal groups but also the racial, cultural and social bases. But the major part of this problem is the religious side. There are the Hindus, Muslims, Sikhs, Christians, Parsis and others comprising minor religions. The other side of the problem is that of the Indians, Europeans and Anglo-Indians. Then among the Hindus themselves there are the depressed classes, and the Adi-Hindus all over India, and the problem of Brahmans versus Non-Brahmans in Madras and Bombay presidencies.

But of all these the religious problem, specially that of Hindus versus Muslims, or more precisely speaking the Muslim problem, is the most difficult, and on several occasions unsuccessful efforts have been made to solve it but the task has many times been found most embarrassing. In fact, it is this part of the Indian problem on which hinges the real success of the constitution makers.

The following table* indicates the religious distribution of population in India according to the census of 1921 :—

Religion.	Population.	Percentage
Hindus (including Jains) ...	163,600,555	66.24
Sikhs ...	2,367,021	0.96
Muslims ...	59,444,331	24.07
Budhists ...	11,490,815	4.65
Parsis ...	88,464	0.04
Christians ...	3,027,881	1.23
Others ...	6,941,133	2.81
Total for British India ...	216,960,200	100

This table does not include the population of the Agencies and tribal area on the North-West of India.

This indicates an extremely unequal distribution of religious population of India as a whole. Among all the communal problems the Muslim problem most affects all discussions of the question of an Indian federation. Therefore, we take it up first. The Muslims are in a majority over all others only in the Punjab, Bengal, North-West Frontier Province and British Baluchistan. In the remaining provinces they form a small minority.

The actual figures are the following :—†

Province	Total population	Muslims	Percentage of (3) to (2)
1	2	3	4
Madras ...	42,318,985	2,840,448	6.71
Bombay (including Sind and Aden) ...	19,348,219	3,820,153	19.74
Bengal ...	46,695,536	25,210,820	53.99
United Provinces ...	45,375,787	6,481,032	14.28

* Vide Table No. 7 on pp. 14-15 of 'Statistical Abstract for British India and Indian States', Sixth Issue.

† Ibid.

Province	Total population	Muslims	Percentage of (3) to (2)
1	2	3	4
Punjab ...	20,685,024	11,444,321	55.33
Bihar and Orissa ...	34,002,189	3,690,182	10.85
Burma ...	13,169,099	500,592	3.80
Central Provinces and Berar ...	13,912,760	563,574	4.05
Assam ...	7,606,230	2,202,460	28.96
North-West Frontier Province ...	2,251,340	2,062,786	91.62
Baluchistan ...	420,648	367,282	87.31
Ajmer-Merwar ...	495,271	101,776	20.55
Coorg ...	163,838	13,021	7.95
Delhi ...	488,168	147,758	29.04
Andamans and Nicobars ...	27,086	4,104	15.14

The question of Muslim representation was for the first time raised when the Morley-Minto Reforms were going to be introduced. A Muslim deputation waited upon Lord Morley, the then Secretary of State for India, and placed its three demands before him, *viz.* separate electoral college for their co-religionists, separate representation in legislatures in excess of their population, and the appointment of a Muslim as one of the two Indian members in the Viceroy's Executive Council. The first two demands were granted while the third one was refused.

After that in the Lucknow Pact of December 1916, the Muslims succeeded in getting both these demands further re-affirmed as the price of their co-operation with the Indian National Congress for pressing the question of reforms upon the British Parliament, and the subsequent Reforms of 1919 accepted the Pact as the basis of Muslim

representation. Since then Muslims have also succeeded in getting separate communal electorates and representation in certain provinces in all local bodies like the District and Municipal Boards. But one effect of the Lucknow Pact, based as it was upon the principle of granting weightage representation to minorities, was that the Muslims, though they were in a majority in Bengal and the Punjab, were left in a minority as the Hindus and Sikhs got excess representation. This is very well illustrated by the following table:—

Province	Percentage of Muslim population	Muslim members	Total elected members (Communal)	Percentage of Muslim members
Punjab ...	55.33	32	64	50
Bengal ...	53.99	39	92	42.6

These figures for the election of 1926 clearly show the Muslim minority in Bengal, and taking results of other elected seats their minority in the Punjab too, though in the latter province they got 50 per cent of the elected communal seats.

Now for the future the Muslims demand separate electorates, weightage representation in all legislatures and local bodies in provinces where they are in a minority, representation in majority in the Punjab and Bengal by means of reservation of seats, one-third representation in the Central Legislature, weightage representation in all services, increased facilities for imparting of Muslim culture and Urdu language, separation of Sind from Bombay and its constitution into a separate province (so that they may have one more province where they may be in a majority), effective representation in all cabinets, and introduction of full reforms into North-West Frontier

Province as in all other provinces, the last demand having been added to create one more full fledged province with a Muslim majority, because the Reforms of 1919 left that province unaffected and kept it under the direct control of the Government of India. With regard to the form of Government they agree with others that there should be a federal government but they add a rider to the effect that all residuary powers should belong to the provinces, the powers of the Central Government having been strictly limited and specified. They also demand that if a resolution is introduced into a legislature and if $\frac{2}{3}$ of the members of a community demand that as that resolution affects them prejudicially it should not be moved. These are their extreme demands as put forward by their extremely communal section. There is another section, very influential indeed, which accepts whatever has been conceded to them under the scheme of the Nehru Report. Because of the presence of two groups, the Muslim League had been split up into two sections, one section antagonistic to the Nehru Report and the other section supporting it. Though a compromise was later on affected between the sections led by Mr. Jinnah and Sir M. Shafi respectively, still there are influential nationalist Muslims who are on the side of the Congress and are fundamentally opposed to all communal demands.

The Hindus, as declared by their Mahasabha, *i. e.* their All India Organization, demand joint electorates, no communal representation whether in excess of population or in proportion to it, and open competition for all services which should be open to all without distinction of caste, creed or race.

Under the Morley-Minto Reforms the Sikhs had no separate representation whether in the Punjab Legislative Council or in the Viceroy's Legislative Council. But taking into consideration their loyalty as shown in the Great War and considering their importance in the Punjab, the only province where they live in a mass, the Montagu-Chelmsford Report stated: "The Sikhs in the Punjab are a distinct and important people; they supply a gallant and valuable element to the Indian Army; but they are everywhere in a minority, and experience has shown that they go virtually unrepresented. To the Sikhs, therefore, and to them alone, we propose to extend the system already adopted in the case of Muhammadans"* Accordingly in the Reforms of 1919 the Sikhs got reserved for themselves 12 out of 71 elected seats and nearly 13% of the whole strength of the Council which consists of 93 members. The Sikh problem arises only in the Punjab, it being the only province where they form a very important minority, *i. e.* 11.09 of the total population of that province or 97% of their total strength, the rest being distributed throughout India. But now they agree, in a majority in almost all the points with the Hindus, but they say that in case communal representation is given to any community they should get effective and separate representation in the Punjab and the Indian Legislature as well as in the Punjab cabinet. This was made clear at the Round Table Conference, in London, by the Sikh representative.

The Christians, who nowhere form any appreciable minority, have agreed in their All India

* Joint Report, p. 150.

Federation with the Sikh view. But they would have separate representation in case other communities get it. The Anglo-Indians and Europeans, in order to safeguard their interests, want weightage and separate representation wherever they have got it under the 1919 Reforms. They were given separate representation in 1919 despite the suggestions of Mr. Montagu and Lord Chelmsford to protect them by nomination.

After the Muslim problem next in importance, from the communal point of view, is that of the depressed classes all over India and of the Non-Brahmans versus Brahmans in Madras and Bombay. The Morley-Minto Reforms did not give them any representation as distinct communities. But the 1919 Reforms gave the depressed classes separate seats by means of nomination, while the Non-Brahmans got separate representation in Madras and parts of Bombay presidency by means of reservation of seats in general electorates. As a result of the elections to legislatures after 1919 the Non-Brahmans undoubtedly got a very large number of seats captured by their candidates in Madras and in quite an appreciable number in Bombay, much in excess of the reservation granted them, as they had also the right to contest other seats. Apart from this the present method of not only appointments but also promotions in Government services in Madras has given the Non-Brahmans ascendancy over the Brahmans out of all proportion to their population or qualifications. Recently another movement among the so-called depressed classes has been set up, particularly after the appointment of the Simon Commission, which is called the Adi-Hindu Mahasabha, which claims special

and effective protection for themselves on the ground that they are the aboriginal inhabitants of India and that the Aryans after the conquest of India had driven them into oblivion. Now the depressed classes demand separate electorates and representation in all legislatures, direct appointments to government services and special facilities for education of their children.

3. Redistribution and Status of Provinces.

At present British India is divided for administrative purposes into several territories called presidencies or provinces. They are Madras, Bengal, Bombay (including Sind), United Provinces, Bihar and Orissa, Punjab, Assam, Burma, and Central Provinces, which have the reforms of 1919 introduced in them and are under their own administrations. There are other small territories like Delhi Province with Ajmer-Merwar which are under the control of the Government of India. And lastly, there is the North-West Frontier Province which is a separate province under the direct control of the Indian Government who administer it through their Chief Commissioner, but this province does not enjoy the benefits of the Reforms of 1919.*

These provinces and territories are not equal from several points of view. To illustrate their area, population, and revenue the following table will suffice. The population is based on the census returns of 1921, and revenue on the basis of the figures for 1928-29, and the whole table on the figures of Table No. 1 in the Statistical Abstract for British India, Sixth Edition, pp. 2-3, and Statesman's Year Book, 1929 pp. 95-178:—

*This year the N. W. F. Province has been made a governor's province with almost the same status as other provinces.

Province.	Area in sq. miles	Population	Total Revenue in Rs.
Madras ...	142,260	42,318,985	19,40,51,400
Bombay ...	123,621	19,348,219	15,73,88,000
Bengal ...	76,843	46,695,536	10,94,11,000
United Provinces ...	106,295	45,375,787	15,38,45,898
Punjab ...	99,846	20,685,024	11,21,66,000
Bihar and Orissa ...	83,161	34,002,189	5,74,37,000
Burma ...	233,707	13,212,192	10,72,20,000
Assam ...	53,015	7,606,230	2,80,06,000
Central Provinces and Berar ...	99,876	13,912,760	5,53,65,000
North-West Fron- tier Province ...	13,419	2,251,340	23,96,345 in 26-27
Baluchistan ...	54,228	420,648	9,74,402 in 1926-27
Delhi and Ajmer Merwar ...	3,275	983,459	8,32,973 in 1926-27
Coorg ...	1,582	488,188	4,56,377 in 1926-27

The territorial distribution of these provinces is not based on any systematic or scientific plan. They represent neither homogeneous cultural, nor religious, nor linguistic territories. They were determined mostly accidentally or for the sake of administrative convenience. The people of each are, therefore, dissimilar in several respects. They speak different languages, and follow different religions and pursue varying occupations. And because prior to 1919 the country was governed on an unadulterated bureaucratic system there was little trouble experienced in the administration of these areas. But since the Reforms of 1919 introduced responsible government to some extent, the linguistic and cultural diversities in these provinces have come to the fore. Except

in the case of the Partition of Bengal in 1905 Indians never objected to these territorial arrangements and rearrangements.

However, for the future the problem cannot be treated with the same indifference as there are serious practical difficulties in the way of successfully working responsible self-government in the provinces as at present constituted, and practical experience since 1919 has confirmed it. The problem has now assumed not only cultural and linguistic but also religious and political importance.

To illustrate the difficulty a few cases would suffice. The Muslims desire separation of Sind from the Bombay Presidency and its constitution into a separate province with the same institutions as in other provinces so as to come on a par with the latter. They also desire that North-West Frontier Province should also have the same status as any other province and it should no longer remain under the direct control of the Government of India but should be fully autonomous. Their claim is based upon religious and cultural grounds for thereby they hope to increase the number of provinces with Muslim majorities. While reluctantly agreeing to the Muslim demand regarding the N. W. F. P. the Hindus object to the separation of Sind from Bombay, as they fear that the Hindu minority would then be exposed to the whims of the Muslim majority.

(4) The Problem of Languages.

Another side to the problem of the rearrangement of provinces is the linguistic and cultural basis. It is true that cultural and linguistic problems cannot both be collaborated into one

only because of the overlapping of the areas from the two points of view. A glance at the map will convince every body that no province has a homogeneous population from the linguistic viewpoint, nor is a linguistic area comprised within one province only with the result that the legislatures in the provinces are composed of members who in several cases will not understand each other's speech if they chose to speak in their own vernaculars. This confusion is very much experienced in the provinces of Southern India where the languages differ from each other extremely. For example, the Kanares speaking people are distributed in three territories, the presidencies of Madras and Bombay and the Indian state of Mysore. Again in the presidency of Madras there are clearly four large distinct linguistic areas apart from the Oriya speaking tracts in the northern part. These are Kanarese in the south-west, Tamil in the south, Malayalam in the south-west, and Telugu in the north. Similarly in the Bombay presidency there are at least five distinct languages spoken in different parts, *viz.* Sindhi, Gujrati, Rajasthani, Marathi and Kanarese. Central Provinces and the province of Bihar and Orissa too are not homogeneous in this respect. So that there is a demand for rearrangement of provinces on a linguistic basis.

As language is the vehicle of our thoughts and, therefore, occupies an important place among the various factors that demarcate one society or community from another, its question always presents serious difficulties in deciding as to which of the languages is to be patronised by the State when that State happens to be one in which several languages are spoken. It is true that in

many other federations the problem of languages confronted the constitution makers and they successfully solved it, but the case of India is a different and a more complicated one. No other country had so many languages and at different stages of development. Then again in this case the language of the present rulers differs entirely from all the languages of the ruled. English, being the language of the rulers, has always been shown favour.

It was about 1833 that the question of medium of instruction in India arose for the first time during British rule. Though Warren Hastings and his successors tried to give an impetus to the study of oriental languages, their efforts did not extend to any general solution. Macaulay specially fought for the recognition of English as the chief medium of instruction in public institutions and he succeeded in his mission. Since then the study of English has made rapid progress in India and it is now the only language which is easily understood by a large section of the educated men in the whole country. Even the Indian National Congress had to adopt it as its official language by means of which the delegates coming from the different provinces of India could express their thoughts to each other.

Even so late as 1911 Lord Morley gave expression to sentiments and hopes of English on this question. Speaking before the English Association on the subject of the expansion of English as a unifying influence, he said: "I called the English most widespread of living tongues. Surely not the least stupendous fact of our British annals is the conquest of a boundless area of the habitable globe by our English language. That is

pass in India. Though to-day only a handful, a million or so of the population use our language, yet English must inevitably spread from being an official tongue to be general unifying agent. An Englishman who adds to the glory of language and letters will deserve Caesar's grand compliment to Cicero, declaring it a better claim to a laurel crown to have advanced the boundaries of Roman Genius than the boundaries of Roman rule."* But since the time Morley uttered these words circumstances have changed and it not being the peoples' mother-tongue, English cannot now oust the provincial languages. And recently reaction against English has started and in almost all provinces the question of medium of instruction has again been re-opened. The Non-Co-operation movement has also contributed to the growth of this reaction by preaching the gospel of 'back to the old times', and also by creating a hatred for every thing that is English, including the language. In several provinces vernacular is being slowly made the medium of secondary and thereafter higher education. And because of this movement Hindi among the Hindus and Urdu among the Muslims are now making rapid progress and their literatures are being enriched by daily additions of new publications translated from foreign languages and also by original contributions.

As for the Indian languages—the chief problem now undoubtedly concerns these—though it is difficult to estimate the exact number of the various dialects spoken, there are 19 main languages spoken by the people and occupying distinct

*C. P. Lucas' Introduction to Durham's Report. Vol. I, quoted at pp. 133-136.

territories on the map. They may roughly be divided into four groups, *viz.* Iranian, Indo-Aryan, Tibeto-Chinese and the Dravidian, occupying the north-west, the middle, the north-east, and the south of the country. In point of importance these languages are not on a footing of equality, whether in regard to the number of speakers of each or the richness of their literature.

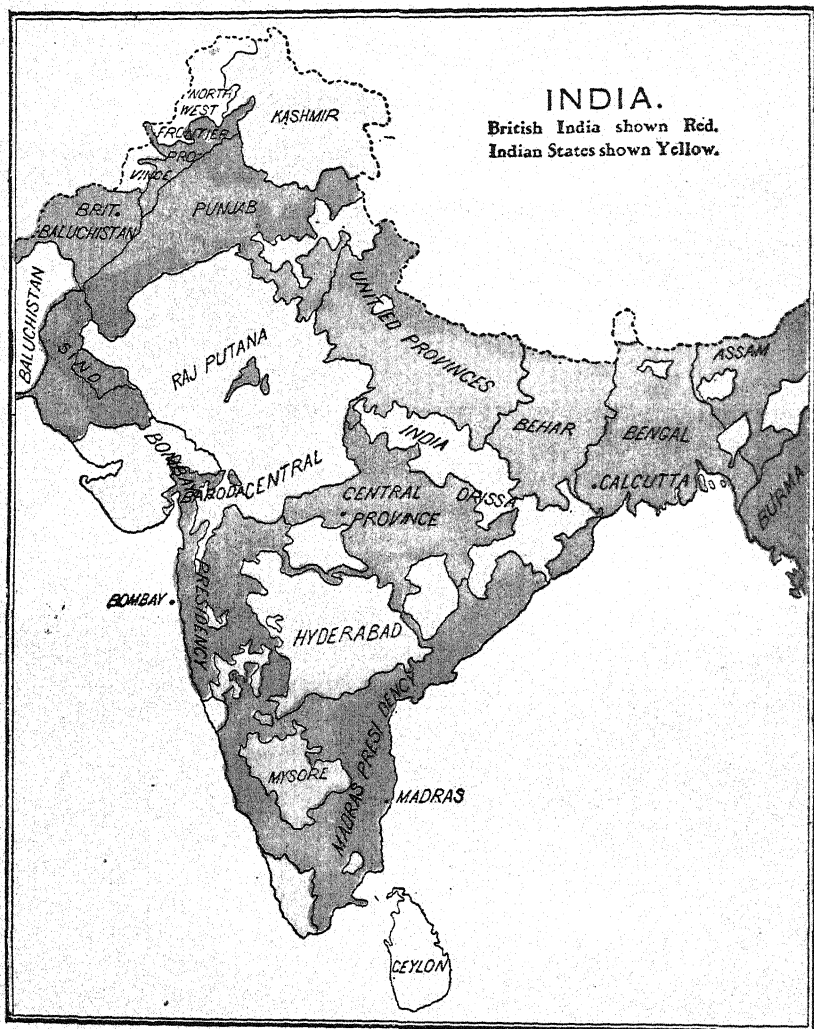
The map indicates that the linguistic areas cross provincial boundaries and in several cases one language is spoken in three and some times four provinces. The cases of Madras and Bombay presidencies are typical as affording very definite material to illustrate the anomaly. The following table makes the point clear:—

Language.	Number of speakers in	
	Bombay Presidency.	Madras Presidency.
Tamil	...	17,187,086
Telugu	...	16,101,728
Malayalam	...	3,226,256
Oriya	...	1,573,942
Kanarese	2,403,488	1,533,344
Western Hindi	1,065,679	966,955
Marathi	8,435,740	302,312
Gujrati	3,175,652	91,063
Rajsthani	240,911	39,590
English	56,344	36,994
Sindhi	2,645,786	...
Bhili	422,632	...
Khandeshi	200,224	...
Balochi	197,913	...
Western Punjabi	157,240	...
Others	346,660	321,667
Tulu	...	540,457
Kandhi	...	367,231

In this connection a suggestion is often made that linguistic areas may be separated into different administrative units, but the suggestion is

INDIA.

British India shown Red.
Indian States shown Yellow.



difficult to carry out as will be shown in the next chapter.

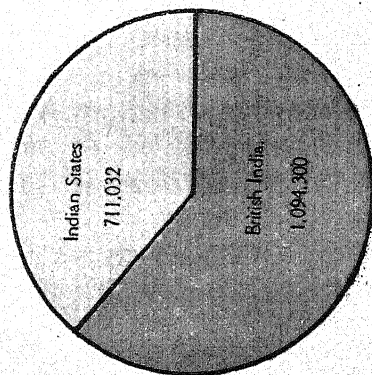
Apart from the question of provincial vernaculars and the positions of relative importance to be assigned to each, there is the broad question of Hindi versus Urdu. While Hindi is the language spoken by the largest single group in India and also all the Hindus, in whatever parts of the country they live, are interested in it, there is also Urdu which being the language of the Muslims is dear to them and they wish it to occupy a distinct place in the future system of education in India. In the Punjab, United Provinces and parts of Bengal and Bihar it is also officially recognised as court language, though in some of these provinces, e. g. in U. P., Hindi is also equally recognised since the time of Antony P. MacDonell (Lieutenant Governor 1895-1901). Also there is the question of a national script which has only very recently come to the front and the importance of which is bound to increase in the future.

5. The Problem of the Indian States.

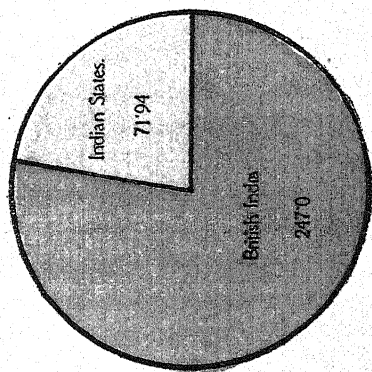
The yellow patches on the map of India indicate the extent of the country ruled by Indian Princes and called the Indian States or Indian India, the latter term having come to be applied to this territory very recently. The States do not lie in a compact or continuous mass but are scattered all over India and interlaced with British India, though in the central and western parts of the country their number is decidedly very large. Some of the States are surrounded on all sides by British territory. It is only very few of them, specially in Kathiawar, whose shore is washed by the sea.

DIAGRAMS SHOWING COMPARISON BETWEEN BRITISH INDIA AND THE INDIAN STATES.

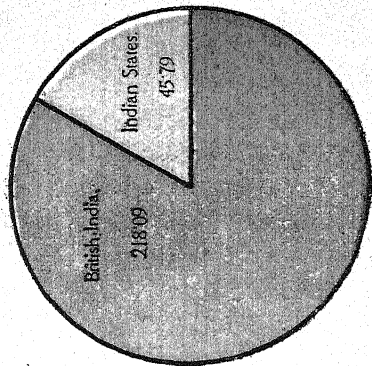
Area in Sq. Miles.



Population in millions.



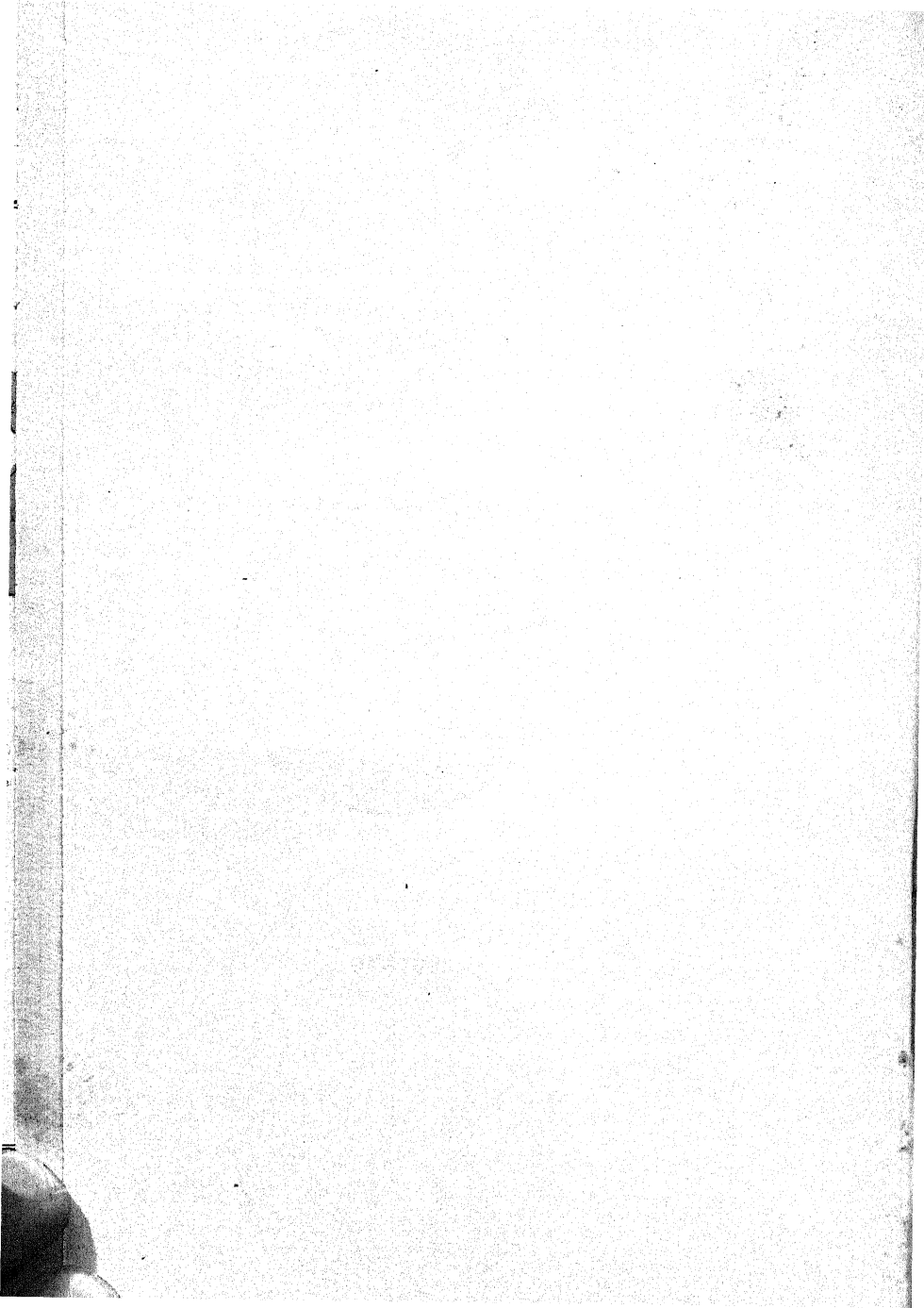
Revenue in Crores of Rupees.



The States cover an area of 711,032 square miles with a total population of 71,939,187, the corresponding figures for British India being 1,094,300 and 247,033,293 respectively. Their total revenue is 45·79 crores of rupees as compared with 218·09 crores of British India.

There are about seven hundred of these states which vary extremely in the matter of their internal independence, sizes and political importance. In fact we find "at one end of the scale, Hyderabad with an area of 82,700 square miles, with a population of 12,500,000, and a revenue of $6\frac{1}{2}$ crores of rupees or about £ 5,000,000, and at the other end of the scale, minute holdings in Kathiawar amounting in extent to a few acres only, and even, in certain cases, holdings which yield a revenue not greater than that of the annual income of an ordinary artisan".* Another contrast between these states is the difference in their privileges, immunities and their status *vis-a-vis* the paramount power. Rulers of most of them, those of the lesser order, are entitled to no salutes and are, so to say, merely dignified zamindars more or less paying tributes to bigger states as in Kathiawar or to the Government of India, while others are virtually independent in all internal matters concerning their states, only they have transferred the control of all their foreign affairs to the Government of India. The former class are placed in groups under political agents to the Governor-General while the latter have direct dealings with the Government of India or through the provincial governments. Some of the bigger states even keep regular

* Butler Committee Report, pp. 10-11.



what among other things, is slowly coming to armies and have treaties* with the paramount power, while others have sanads granted by the paramount power or have been otherwise recognised. Even in their internal administration the states differ widely. There are, so to say, "states economically, politically, and administratively advanced, and states, partriarchal, or quasi-feudal in character which still linger in a medieval atmosphere; states with varying political powers, constitutional states like Mysore and Travancore and states which are under purely autocratic administration".† The following table gives an idea of a division of these states into different classes:—

(Taken from Butler Committee Report, p. 10)

Class of State, Estate, etc.,	Number	Area in Sq. Miles	Population	Revenue in crores of Rupees
1. States the rulers of which are members of the Chamber of Princes in their own right.	18	514,886	59,847,186	42·16
2. States the Rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves.	127	76,846	8,004,114	2·89
3. Estates Jagirs.	327	6,406	801,674	·74

It is unnecessary here to trace the history of these states. They are remnants of territories

* Butler Committee Report, p. 11. † These are 40.

which were left unannexed after the imperialistic policy of annexation followed by the Marquess of Wellesley, Lord Hastings, and Lord Dalhousie, the latter having been responsible for a very large part of the annexations and who, if he had been allowed to pursue his policy unhindered for a longer time than he was in office, would not have left a single yellow spot on the political map of India. But after the Mutiny, when the Government of India passed into the hands of the British Crown, the Royal Proclamation of 1858 guaranteed security of treaties and rights to all the then Indian Princes and this promise has been repeated several times, the last occasion being the publication of the Joint Report in 1917.

Broadly speaking there are a number of points common to all the states. The law of British India is not applicable within their territories. They are more or less independent in administration; they depend upon the paramount power for their security, into whose hands they have placed the direction of their external relations; and they cannot be annexed by the British Government of India, though in case of serious internal maladministration they can be compelled to halt or be punished with even deposition of the ruler. And the states, on their part, cannot interfere in the administration of British India.

The problem which at present confronts the constitution makers of India is that of the position of these states in the future and their relation with the Government of British India *vis-a-vis* the British Crown. These relations are twofold, political and fiscal. The states at present have to deal directly with the Government of India in the political department. Of course, the Government

of India often times take approval of the Secretary of State for India before announcing their decision on any disputable point. The Chamber of Princes, constituted after the Reforms of 1919, has now enabled the Princes, who had previous to that, no opportunity to come together and discuss matters relating to their order and affecting the welfare of them all, to meet and formulate their views. They say that their treaties were with the Crown and not with the Government of India and the latter, when there is any dispute between it and any state, is only a party which should not be its own judge. They want a radical change in the attitude of the Government of India and have laid down four fundamental factors for approaching the problem of the future. "Firstly, the States have rights—absolute rights—rights which are ascertainable by the application of well-known legal principles. Secondly, there must be judicial machinery for the fair adjustment of disputes so that the Government of India shall no longer be judge in their own cause, and that the aggrieved State may know what case it has to meet and not be left by official secrecy in ignorance which breeds distrust. Thirdly, there must be constitutional machinery for the adjustment of differences of opinion and conflicting interests between the States and British India and Great Britain. The fourth and last, and perhaps the most important factor of all, is that the States and their rulers are loyal to the King, the Empire and India, and are ready and willing to co-operate in building up a successful and united India within the Empire—if only they are given the opportunity, by the institution—in consultation with them—of appropriate

federal machinery, to play their rightful part."* And they want that the end should be reached by means of an agreement. As for the fiscal relations, their grievances are that in the past they have heavily suffered on account of the sacrifices they were compelled to make and now they should have a share in the profits of the earnings of railways which pass through their territories, a share in the income from excise which is also indirectly levied on the subjects of the States, and the share should be in a certain reasonable proportion. They also say that the customs duty as well as the policy of the Government of India with regard to the ratio of the rupee also affect them directly and they are entitled to a voice in the determination of such financial arrangements which affect them and their subjects equally with British India.

So far we have dealt with the problem of these States as affects them in relation to British India, but there is another aspect of it which concerns the subjects of these States in relation to the princes themselves. Lately there has come into existence the movement known as the States Peoples' Association which holds its periodical conferences in different States. The States' subjects want that their own privileges and rights should be guaranteed by the paramount power as against the despotic rule of the princes. As has already been remarked there are several states like Travancore, Mysore, and Baroda where representative and, to some extent, responsible institutions have been started and their subjects are happy. In fact, in several respects the State of Mysore has been held out as a model and it

*'The British Crown and the Indian Princes,' p. 98.

is in certain respects even ahead of British India. But in a vast majority of them the rulers still think of their states in terms of personal equation, where the administration is purely autocratic, and where they have considered their personal happiness as that of their subjects, in which there is no impartial judiciary, no security of life and property to the subjects, and no distinction between the privy purse of the ruler and the general budget of the state, the princes devoting almost their whole time to their own well-being. Gross maladministration has in some cases been detected and the Government of India has effectively interfered to make a change for the better. But the States' Subjects now demand that in any future Indian polity their rights should be effectively protected by the Government of India by the establishment of responsible government under the aegis of the princes, by the introduction of an impartial judicial system and the separation of the princes' privy purse from the budget of the state. These questions have great bearing upon the future constitution of India as they affect the form as well as the spirit in which that constitution should be framed and the relations of the Government of India with the States should be defined in that system.

6. Political Parties and the Form of the Constitution.

Ever since the Royal Proclamation of 1858 Indian politicians had little thought of the definite form of the future and the ultimate constitution of India. The various Acts of 1861, 1892, 1909 had not clearly indicated it. In fact the problem had been shelved. When the Indian National

Congress was formed in 1885 its programme was vague and consisted of piecemeal reforms like the separation of executive and judicial functions, appointment of more Indians to higher services, holding the Civil Service Examinations simultaneously in England and India, and such other generalisations as the introduction of representative institutions and so forth. It was for the first time in 1906 that the late Mr. Dadabhoy Naoroji as president of the Calcutta Congress, in his presidential address defined the goal of India as self-government; even then the term was not clearly explained. Not even the anarchist party could clearly define their aim beyond that of driving the British out of India. The Muslims, who, late in the field, formed their separate league said nothing to clear the issue except that in the future the rights of their community should be safeguarded. So late as the Christmas of 1916, the joint deliberations of the Congress and the Muslim League in Lucknow, produced a scheme of reforms which, except for a few general demands, did not place before the country any definite goal. Subsequently such words as 'Home Rule' and 'Colonial Self-Government' were used but without any preciseness about them. The Government, too, defined their ultimate goal in the Announcement of August 20, 1917, as full responsible government but without a clear interpretation. This led to grave misunderstandings between them and the Indian politicians, the latter saying that it meant the form of government existing in the self-governing dominions of the British Empire. The admission of India to all Imperial Conferences and her original membership of the League of Nations

with other dominions supported the hypothesis of the Indian leaders. But on February 8, 1924, Sir Malcolm Hailey, the then Home Member of the Government of India, declared that the term did not imply Dominion Status but it was only a road to it. This interpretation was repeated by several British statesmen from 1924 onward. But the Indian politicians did not accept its accuracy. Happily, Lord Irwin's Announcement of November 1, 1929, set at rest this part of the controversy by defining the aim of British administration in India as Dominion Status and further declaring that this was even implied in the Declaration of August 20, 1927. At the Round Table Conference in London and subsequently in the British Parliament, all the three British political parties accepted India's future status to be the same as that of other self-governing dominions.

Mr. Gandhi, while launching his non-cooperation movement, only indicated that his aim was Swaraj, a term afterwards interpreted in a hundred ways without any definite idea as to what is really conveyed. The Liberal Party in India, too, failed to define their policy in unambiguous terms, confining themselves to such vague terms as the achievement of self-government by constitutional means. The Congress, committed to the policy of non-cooperation with the Government, declared to achieve its goal by all legitimate and peaceful means which by its implications included direct action too.

The Madras Congress of December 1927 passed the famous Independence Resolution which fixed complete independence out of the British Empire as India's goal, but it did not throw any light

on the precise nature of the future constitution, as it was thought inexpedient to open the question before independence was achieved. In fact no, political group had devoted itself to the study of this important question. But individual efforts were not wanting in the field and Mrs. Besant drew up a draft constitution which was introduced by some members of the Labour Party in British Parliament, which neither evoked sufficient enthusiasm in India nor was passed by Parliament. Mr. Srinivas Iyengar, the leader of the Independence Group in the Congress, also prepared a scheme, but none got any appreciable support.

Lord Birkenhead, who at that time was at the head of India Office in London, threw a challenge to Indian politicians to produce a constitution agreed upon by the majority. In response to this the Congress and the Liberal Federation called an All Parties Conference at Bombay in May 1928, which appointed a sub-committee under the chairmanship of the swarajist leader, the late Pandit Moti Lal Nehru, and with such distinguished lawyers and ex-members of the Viceroy's Executive Council as Sir Tej Bahadur Sapru and Sir Ali Imam. This Committee after several sittings placed before the country its report, popularly known as the Nehru Report, which contained the outlines of a draft constitution for India. It fixed India's immediate aim to be dominion type of government on federal lines. The Report undoubtedly was one which had gained maximum amount of agreement between the different political parties in India.

But while the Congress was the chief party to this report, it still left the door to independence

wide open and at the Lahore session of December 1929, it definitely declared its goal as complete independence. Indeed, during the last three years there has been a wonderful change in the country's political outlook. Sir Tej Bahadur Sapru, the leader of the Liberal Party, has thus described it; "There is world of difference between politics as they are now and the politics of 1909. The old ideas of 1909 are now matters of ancient history. Our politics are far more definite and far more concrete than they were even ten years ago. A manlier race of politicians with a more masculine faith in the destinies of this country, with more concrete ambitions, has sprung up and occupied the field. Nobody now apologises for demanding Swaraj or dominion status. In 1907, when Mr. Justice Sarda Charan Mitra and Mr. Justice Fletcher of the Calcutta High Court judicially held that there was nothing legally wrong in demanding Swaraj, I remember their judgment was challenged and their discretion questioned."* And side by side with the party demanding dominion status there is now the younger generation demanding complete independence out of the British Empire. But the problem now is, which would be the better and in that case what particular form, whether federal or unitary, the future constitution of India should take. And again, if it is to be federal what exactly ought to be the relations between England and India on the one hand and the Central Indian Government and the various Provincial Governments on the other, *i. e.* how the division of powers etc., should be determined. No doubt, the Round Table

*Sir Tej's Reminiscences, 'The Leader, Allahabad,' dated Tuesday, October, 22, 1928.

Conference in London has made a very valuable contribution toward a solution of this problem, but it has outlined only some general principles and the real solution has yet to be made.

CHAPTER VI

CONTEMPORANEOUS DISCUSSIONS

Introductory.

The problems, as set forth in the preceding chapter, have been fully discussed in the press and on the platform in India and, to a great extent, in England. During the last three years or so intensive propaganda has been carried on by the parties concerned. Claims and counter claims have been advanced on behalf of the different groups, religious, communal, and political, and in support of these claims arguments and counter arguments have been placed. In fact, there has grown up quite a large volume of literature on the subject. Nevertheless, it is no easy task to analyse it and to find out a formula acceptable to all. However, attempts have been made to arrive at some decision and various meetings and conferences of all parties, the All India National Convention held at Calcutta in December 1928, the reports of the Indian Central Committee and the Simon Commission, and the Round Table Conference have undoubtedly contributed their share to a solution of the many difficulties.

This chapter deals with the discussions already held on the various aspects of the Indian constitutional problem, and it sets forth a detached account of the various view-points. Extreme views have also been included within the ambit

of this account to avoid the possibility of leaving out any important claims and discussions thereon. Apart from all this, an attempt has also been made to present the views of some impartial observers who have or had no particular leanings towards any of the parties.

But before dealing with the various aspects of the problem, one after another, two points need be mentioned here. One is a brief statement of what the various political and communal groups think of the ultimate solution of the problem, and the other the fact that in this present discussion we mention only such points as affect the ultimate question of an Indian federation.

The Nehru Report, which represented the maximum amount of agreement between the various parties, in many respects applies the principles of a federal government to the solution of the problem. Before its Lahore session, the Indian National Congress had adopted the basic principle of the Report. But with the declaration of independence as its goal the Congress has made it understood that it no longer abides by the principles of the Nehru Report even in respect of the communal problem. And the Congress has also since then not expressed what it thinks of the future form of the Government. However, it may safely be presumed that all prominent Congressmen subscribe to the view of a federated India.

The Indian Princes have very often expressed themselves in favour of an Indian federation with an honourable position for the Indian States inside it.

Among the communal parties, the Hindu Mahasabha has unreservedly accepted the federal

form of government as enunciated in the Nehru Report. But the Muslim League while accepting the federal form insists on giving the provinces larger powers and greater measure of independence, together with unenumerated powers, and thus it aims at reshuffling of the subjects of administration as given in the Nehru Report.

So that while all parties unanimously accept the application of federal principles to a solution of the Indian constitutional problem, they differ only in the exact nature of the division of powers, although this is a very important question and the crux of the whole problem.

It is mainly for this reason and their desire to exercise their share in the future federation of India that the different parties incorporate certain demands in the discussions that have been made so far. The present chapter will, therefore, be confined only to points which will either directly or by their repercussions affect the form of the Indian federation.

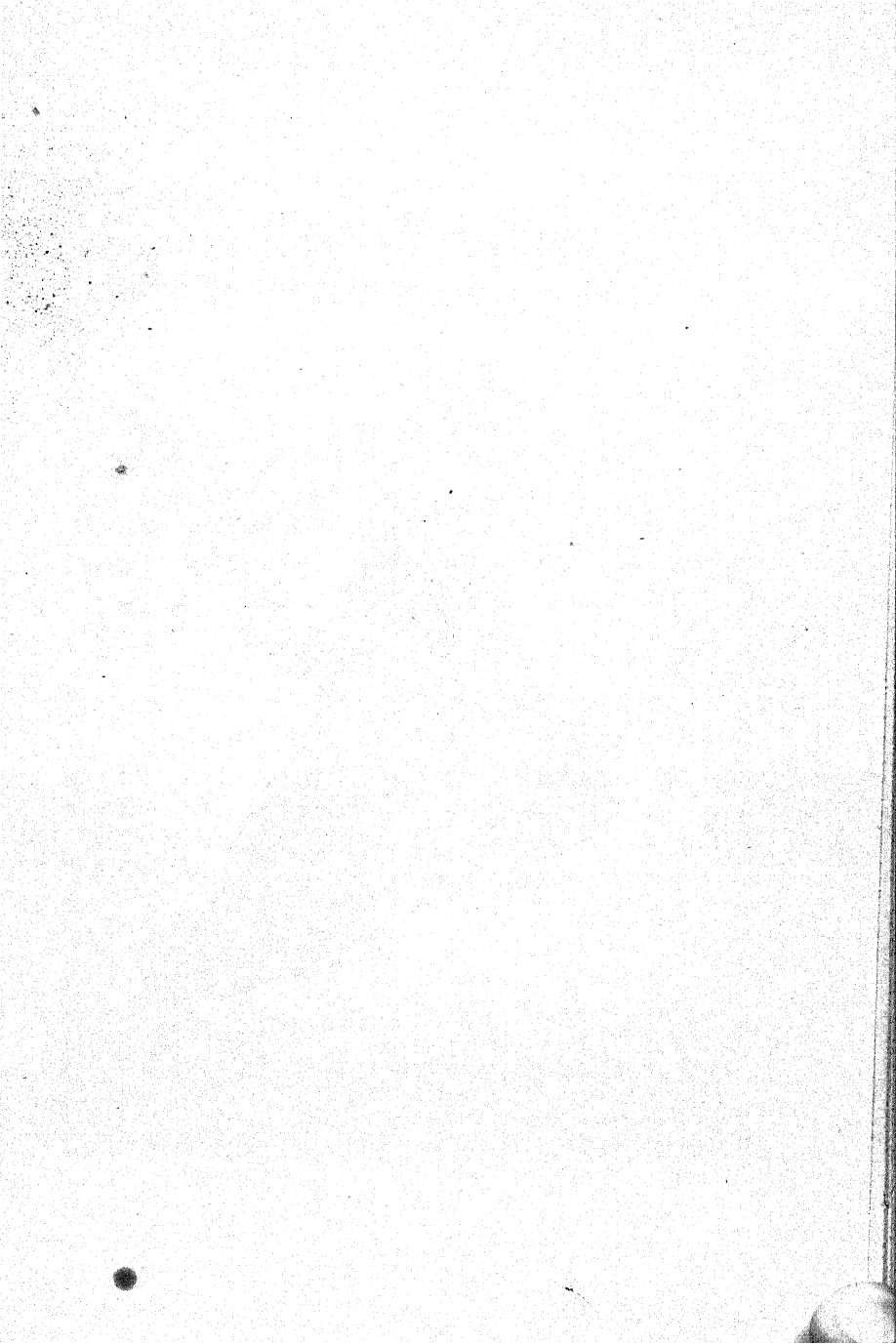
1. The Communal Problem.

Most of the greatest difficulties of the Indian constitutional problem arise out of the communal question. And though the Hindn-Muslim problem is undoubtedly the major part of it, during the recent discussions other communities have caught the infection and added to the complexities of the situation. As mentioned in the preceding chapter, the communal question traces its origin to the Morly-Minto Reforms which recognised the necessity of communal safeguards only in so far as it related to the representation of the Musalmans as a separate community in the legislatures.

The Muslim Problem—The present Muslim de-

mands are based on not one but on several claims. They say that in the Punjab and Bengal, though Muslims predominate in population, their poverty and educational backwardness resulting in their low voting strength as calculated on the present basis of franchise, precludes the possibility of their returning members to the provincial councils in proportion to their population. They, therefore, wish that their interests should be safeguarded in these two provinces by reserving to them seats on population basis, that is to say, they do not agree to grant to the Hindu and Sikh minorities in the Punjab and to the Hindu minority in Bengal, representation in excess of their populations respectively. This means adoption of the principle of reservation of seats for the majority community.

Again, in the other provinces they want for themselves reservation of seats in legislatures in excess of their population and on the basis of the Lucknow Pact. This means reservation of excessive representation to the minority community. They base this claim upon the fear of what they term 'Hindu Raj' which, they say, would result in these provinces if Musalmans are not given protection, because the Muslim population in them is extremely small, e. g. 6·7 % in Madras and 14·3 % in U. P., 19·7 % in Bombay, 3·8 % in Burma, 10·9 % in Bihar and Orissa, 4·1 % in the Central Provinces, and 29 % in Assam. And it is through this weightage representation that they hope to exercise considerable influence not only in the provinces but also in the future federal government of the country as they confidently rely on returning their own candidates from the provinces to the Central Legislature.



In addition to representation they want their own separate electorates, *i. e.* only Muslim voters should elect Muslim members. They say that even if their representation is secured in the proportion indicated but joint electorates are introduced, only those Muslim candidates would be actually returned who have Hindu inclinations, for the non-Muslim voters in seven out of the present nine provinces in India far out-number the Muslim voters. Such an election would, they say, mean that the Muslim case in councils would go by default, and their interests would not be truly and effectively safeguarded, and that ultimately they would not have sufficient communal representation in the Central Legislature, returned from the Provinces.

Separate electorates and communal representation constitute their claim number one. The Nehru Committee discussed the question and rejected the principle of reservation of seats for the majority community for obvious reasons. But it tried to allay the present Muslim fears in the Punjab and Bengal by providing for the adoption of adult franchise throughout so as to give each community a chance of exercising influence over elections in proportion to its population. The very able and illuminating discussions of the Nehru Committee on this question disclose the hollowness of Muslim fears with regard to these two provinces. The conclusions of the Committee are based upon the figures of 1921 census. These figures clearly indicate the presence of distinct communal areas or districts. The map of the Punjab, prepared by the Committee and affixed here, clearly shows that out of the 29 districts in the Punjab as many as 15 are overwhelmingly

Muslim, two are predominantly Muslim, and in at least 9 the Musalmans have a fair chance of representation. The figures, as given by the Committee, show that "quite apart from any artificial reservation of seats there is a natural reservation in more than three-fourths of the Punjab. In less than one-fourth there is some chance of free play. The distribution of population favours the majority community, Muslims, considerably"* . These figures and conclusions have not been challenged. And on their basis, the Committee says, the Muslims are likely to capture very safely 120 seats out of a total of 207, i. e. 85.0 %, although their population is only 55.33%. And thus the Muslims of the Punjab would be enabled to have a very fair and equitable representation even in the Indian Legislature.

As for Bengal, another province with a Muslim majority of population, the Nehru Committee conclusions are still more instructive and illuminating. There are again three zones into which the province can be divided on religious basis, and although the total population of Bengal contains only 54% Muslims, they are sure to capture at least 282 seats out of a total of 466 for the province, giving each 100,000 of the population one representative in the legislature. These conclusions about Bengal are based upon extremely interesting figures of the last district boards elections in that province. In 12 out of the 26 districts the Muslims captured in each very high majorities, leaving the Hindus in almost negligible minority. Again in Chittagong and Mymensingh districts, although the Hindu

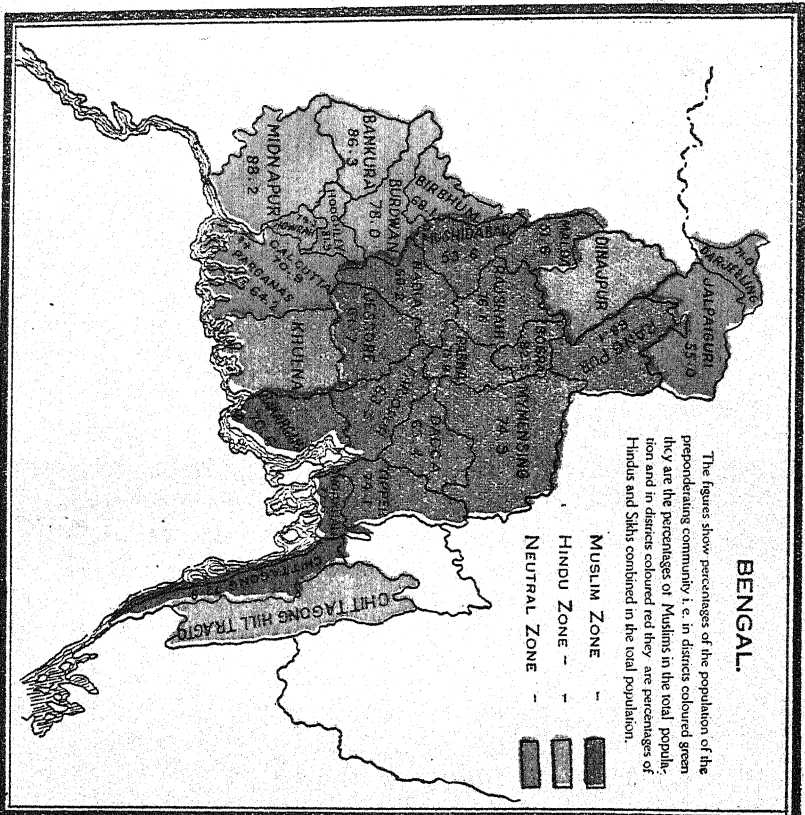
* Nehru Committee Report, 3rd Edition. Appendix A, page 147.

[illegible][illegible]

BENGAL.

The figures show percentages of the population of the preponderating community i.e. in districts coloured green they are the percentages of Muslims in the total population and in districts coloured red they are percentages of Hindus and Sikhs combined in the total population.

District	Muslim (%)	Hindu/Sikh (%)	Zone
Calcutta	86.3	-	Muslim Zone
Midnapur	88.2	-	Muslim Zone
Burdwan	78.0	-	Muslim Zone
Birbhum	59.1	-	Muslim Zone
Poona	53.0	-	Muslim Zone
Bankura	53.0	-	Muslim Zone
Chittagong Hill Tracts	55.0	-	Muslim Zone
Jalpaiguri	55.0	-	Muslim Zone
Dinajpur	55.0	-	Muslim Zone
Rangpur	55.0	-	Muslim Zone
Cooch Behar	55.0	-	Muslim Zone
Khuluja	55.0	-	Muslim Zone
Malda	55.0	-	Muslim Zone
Nadia	55.0	-	Muslim Zone
Shibpur	55.0	-	Muslim Zone
Barisal	55.0	-	Muslim Zone
Dacca	55.0	-	Muslim Zone
Tripura	55.0	-	Muslim Zone
Chitragong	55.0	-	Muslim Zone
Other districts	< 50%	> 50%	Hindu Zone / Neutral Zone



Bengal delegates at the All Parties Conference held at Lucknow in August 1928. The Punjab delegates because of the third element of Sikhs in their population, arrived at a pact known as the 'Punjab Pact' and included in the Conference proceedings. The pact ran; "The Punjab Muslims directly with the introduction of the scheme recommended by the Nehru Committee report accept its recommendations on communal representation including joint electorates without reservation of seats for any community in the Punjab, provided that the franchise is based on adult suffrage. Provided further that the question of communal representation will be open for reconsideration, if so desired by any community after working the recommended system for ten years in the province."* But the delegates from Bengal unreservedly accepted the Nehru Committee recommendations.

At the National Convention held at Calcutta in December 1923, the Muslim League delegates insisted on incorporating the Punjab Pact in the constitution itself and the motion was agreed to. But they also wished that in case adult suffrage was not introduced the number of Muslim voters should be in proportion to their population, by an adjustment of basis of franchise; but the sub-committee appointed to consider the League proposals reported that no such contingency was to arise.

The Nehru recommendations split the Muslims into three parties, those who were out and out communalists and were opposed to the report, those who were willing to accept the report with certain modifications, and lastly those who un-

*Nehru Report, p. 164

reservedly supported the report. In deference to the wishes of the middle party, the enlarged Nehru Committee, as reappointed by the Lucknow Conference added a rider to its recommendations on communal question, which ran: "Provided that the question will be open for reconsideration after the expiry of the period if so desired by any community."* This was about representation in all legislatures. But the Calcutta session of the Muslim League made another important demand that $\frac{1}{3}$ of the seats in the Central Legislature, in both houses, should be reserved for Muslims. Under the Nehru scheme Punjab and Bengal could elect a very large number of the provincial representatives to the Central Legislature far in excess of their population proportion, and provinces with Muslim minorities were to have their representation strictly in proportion, to their population for a period of ten years. But the Muslim League view was that the two provinces, Bengal and Punjab, already strong enough from the Muslim point of view would, under the Nehru scheme, become still stronger in the Central Legislature while the other provinces would not have effective representation there. They, therefore, wished that the Punjab and Bengal should have representation in proportion to their population while the remaining few seats which these two provinces might lose should be given to the Muslim minorities in other provinces. Mr. Jinnah, the founder and life president of the League, put his case before the convention thus: "It is not only question of getting votes in the Legislature,

*Supplementary Report of the enlarged Nehru Committee, page 22.

but it is also essential that various parts of the Provinces which are themselves vast, should be represented, so that, questions affecting the people or their grievances may be ventilated properly and thoroughly on the floor of the legislature. Very often when proper facts and arguments are placed by one single representative which when they are convincing, sway the entire legislature. It really comes to this that the Nehru Report makes a gift of the extra seats over and above the population basis to Punjab and Bengal; whereas, we propose that this extra 7 or 8 seats should be distributed amongst the minority Muslim provinces."* Though this proposition was accepted by Sir Tej Bahadur Sapru, of course without giving any convincing reasons but merely to placate Muslim opinion, the convention rejected it.

The extreme wing of the Muslim communalists, in their conference held at Delhi, passed a resolution on January 1, 1929, in which they reiterated their extreme demands including separate electorates and communal representation, Muslim representation in all cabinets, adequate Muslim representation in all public services and all public bodies.† The last demand has now increased so much that in all grades of all services not only appointments but also all promotions are required to be on communal basis, and all this to be provided by a statutory provision in the constitution itself.‡ As a concrete case, they

* Report of the National Convention, p. 80.

† These demands were further reiterated by the All India Muslim League, in their annual session at Allahabad, on December 30, 1930.

‡ U. P. Simon Committee Report. Dr. Khan's Explanatory note pp. LVIII-L X, XXVIII-XXXIV.

demand that in U. P. where Muslims constitute about 14 % of the population they should have 30 % representation in the legislature, 30 % representation in all public bodies, and the same proportion in all public services and grades of services, including the department of public instruction. The chief argument in support of these claims is that only Muslim public servants can thoroughly understand the wants of Muslim population, and as the services exercise considerable influence, as past experience shows, on the administration of the country, there is great necessity for such a provision being made in the constitution itself.* Furthermore, they say that as Muslim children should read only under Muslim teachers and through the Urdu language only, there is the need of appointing 30 % Muslim teachers in the province.†

The Hindu view is that almost all these extreme demands are such as can hardly be conceded, mainly for three reasons. Firstly, they are impracticable, dangerous to the healthy growth of a democratic constitution in which there should be equal opportunities for all without any discrimination, and likely to create similar demands from other minorities, and by this spreading contagion they would put a premium on backwardness. This was made clear also at the Round Table Conference by Dr. Moonje, the chief spokesman of the Hindu Mahasabha. Secondly, by guaranteeing to the minority an excessive influence and power they would retard the progress of that minority itself and this would make

* Dr. Khan's Explanatory Note to the U. P. Simon Committee Report, pp. cxiv-cxx.

† Ibid.

the administration less efficient and less secure. Thirdly, it is a mistake to suppose that in future officials would exercise or continue to exercise the same influence on the administration as they had been doing till now, for this is the main grievance of all Indians against the bureaucratic system of administration. But even if it be granted that only Muslim officials can efficiently look after Muslim interests, it only comes to this that in U. P. 14 % of the officials should be Muslims and not 30 %. For, why should the remaining 16 % Muslim officials be allowed to administer to the wants of that proportion of the Hindu population, if the principle embodied in the Muslim demand is really worth accepting and acting upon? Even when education has been made universal and obligatory, the proportion of Muslim children under instruction in U. P. cannot be more than 14 % of the total number. And surely this number does not require more than 14 % of the total number of teachers. Why should, therefore, there be an extra 16 % Muslim teachers? For, if the education of Muslim children can be best looked after by Muslim teachers, it follows necessarily that Hindu culture can be imparted to Hindu children only by Hindu teachers. And, therefore, why should Hindu children be forced to learn under the extra 16 % Muslim teachers? Acceptance of such a novel principle will create insurmountable difficulties. On the question of separate electorates the majority of the Indian Central Committee "are convinced that until Muslims and Hindus are brought together in common electorates there is little prospect of the evolution of a spirit of common citizenship, without which the system of responsible govern-

ment cannot satisfactorily develop.”*

The Hindus as a body oppose these demands. In fact, the Muslims have been encouraged to put forward these demands now because they have got this privilege from the U. P. government which has lately been pursuing this pernicious system of appointments whether by nomination or by reservation in competition. Whatever the motives of the government in this regard be, it is unthinkable that any democratic government can tolerate this state of affairs which instead of satisfying the people creates in the minds of the favoured community further extravagant hopes and irritates the consequently beaten majority. Other provinces have different modes of appointment and promotion and it is difficult to establish a uniform system of appointments in all provinces and ultimately in the federation, if communal claims are conceded.

On the question of Muslim representation in the various provincial legislatures the Simon Commission, while excluding Burma which they recommend for separation from India, say: “Our own opinion is that in view of the existing position and of the weakness of the Muslim minority in six out of the eight provinces, the present scale of weightage in favour of Mohamadans in those provinces might properly be retained.”† The Commission, however, do not view with favour the Muslim claim for their representation on population basis in Bengal and the Punjab while retaining their present weightage in the other six provinces. The Commissioners say: “This would give Mohamadans a fixed unalterable majority of the

* Report of the Indian Central Committee, page 42.

† Simon Commission Report, Vol. II, para 85.

"general constituency" seats in both provinces. We cannot go so far. The continuance of the present scale of weightage in the six provinces could not—in the absence of a new general agreement between the communities—equitably be combined with so great a departure from the existing allocation in Bengal and the Punjab. It would be unfair that Mohammadans should retain the very considerable weightage which they now enjoy in the six provinces, and that there should be at the same time imposed, in face of Hindu and Sikh opposition, a new Muslim majority in the Punjab and Bengal unalterable by any appeal to the electorate."* As regards separate communal electorates the Commission express themselves against the system, though they would not deprive the Muslims of the existing privilege without their own consent.

The Sikh Problem.—The Sikhs in the Punjab on the ground of their paying 40 per cent of the land revenue and their extremely important contribution to the fighting strength of India, desire their representation as much as 30 per cent of the total strength of the provincial council and the same proportion of the Punjab representatives in the central legislature. They are at present divided into two groups, one supporting the Nehru Report on the condition that there is no reservation of seats for any community anywhere, and secondly those who are against the report and place the above demands. The latter have prevailed upon the Central Sikh League to oppose the Nehru Report. At the Calcutta session of the All Parties National Convention they reiterated their demands which were rejected by that body, and

* Ibid.

some of the Sikh delegates withdrew from the Convention. When the Lahore Congress definitely withdrew from the Nehru Report, the all parties Sikh conference promised full co-operation to the Congress to solve the communal question. The Indian Central Committee, though it generally does not approve of the principle of communal representation, states; "If, however, other communities are to be given special protection, the Sikhs demand that they should not be placed in a worse position. We accordingly recommend that until the introduction of adult suffrage, seats for the Sikhs, in all provinces in which they are in a minority, should be reserved in joint electorates on a population basis or their voting strength, whichever is more favourable to them, without prejudice to their right to contest other seats in the joint electorates."* The Simon Commission say that if the existing method of communal representation is retained the Sikhs must get some weightage in their favour in the Punjab, though 30 % is too high.†

Other Communities.—The Parsis and the Indian Christians have often expressed themselves in favour of abolishing communal basis of representation. But most of their decisions are conditioned on the supposition that there would be no communal representation for any community, in any shape whatsoever. And if communal representation is granted to any of the communities, the Parsis and the Christians desire that their communities should also have their due share in any such arrangement. The Europeans and Anglo-Indians did not send any representatives to

* Report of the Indian Central Committee, p. 43.

† Simon Commission Report, Vol. II, para. 76.

the National Convention. But at the Round Table Conference they claimed that because they have very great commercial stake and interests in India their security should be guaranteed under the future constitution. Happily they have lately recognised the necessity of cooperating with Indians in their legitimate claims and have given a practical proof of their sincerity by openly expressing their approval of Lord Irwin's announcement regarding India's goal being Dominion Status, and their representative Mr. Gavin Jones' support of India's claim at the Round Table Conference is the latest proof of it. But as these communities are spread over all provinces in none of which they form a large proportion of the population, it is unlikely that any safeguard promised to them will in any substantial way protect what they term their 'special interests' in the future federation, by means of mere communal or sectional representation in the legislatures.

The problem of Brahmans *versus* Non-Brahmans has been particularly keen only in the Madras presidency where they have organised their party even inside the legislature. Their demands follow almost exactly the same lines as the Muslim demands. The Madras government has unfortunately now begun to follow a discriminating policy in matters of not only appointments but also promotions in all public services under its control. The Non-Brahmans have thus obtained more than their due share at the cost of efficiency. But the result of all elections has confirmed the belief that there is no need for any protection for them in that presidency as even in joint electorates without any reservation of seats they can very well hold their position. The Simon Commission,

too, while referring to the results of the elections since the Reforms of 1919, say: "Non-Brahmans were returned in large numbers, and in no single instance at any of the three elections did a non-Brahman secure his seat only because it was "reserved." It is clear, therefore, that there is no need to continue to reserve seats for non-Brahmans in the Madras Presidency."*

The Depressed Classes.—Their problem is the latest discovery in the political field in India. It has been found extremely difficult to define the term so as to include the communities which are really depressed. They are only sub-castes of Hindus and some of them have been declared untouchables by the higher caste Hindus. But the lower castes themselves do not unanimously desire any separateness from the higher castes, nor are they themselves clear as to which of them should be included among the depressed. The visit of the Simon Commission to India encouraged some of the educated persons in these classes to assume the leadership of their castes, to form associations for the purpose of placing their demands before the Commission, and all this for several reasons. They demand separate electorates and separate representation and special facilities for the education of their children. Evidently, most of these classes do not mix among themselves as they are not on a par. Some of them will not like to be called depressed in spite of what a few of their educated members would wish them to be. One example will illustrate this. Soon after the Simon Commission had visited one of the most important cities in U. P., the Department of Public Instruction, as usual, ordered the prepara-

* Simon Commission Report, Vol. II., para 77.

tion of certain annual statistics including the number of children of the depressed classes under instruction in the various schools and colleges. The present writer, in order to find the number of students belonging to these classes, asked the students concerned in his class to raise their hands. This was necessary as neither in dress nor in the seating arrangement nor by any other visible discrimination there was any difference among the students in the class. No boy raised his hand. But the writer knew that the uncle of one of the students, who was a lawyer, had organised a deputation of his caste fellows as the representation of depressed classes, and had in that capacity tendered evidence before the Commission. He had also taken a very prominent part in the whole movement itself and was subsequently nominated by the Government to the district board to represent the depressed classes. When this fact was placed before the class and the student concerned questioned as to why he hesitated in raising his hand, prompt was his reply, "I do not belong to the depressed classes. I protest against being called so. As for my uncle, I do not agree with his views which he has formed for reasons of his own." The student was right. In fact, the problem of the lower castes is only economic, educational and social. And as education among them is advancing, all their disabilities are fast disappearing.* Even the higher castes, are doing a good deal, even though it may not be held enough, for the uplift of these classes.† The societies established

*Sir P. S. Sivaswami Aiyer, 'Indian Constitutional Problems,' p. 326.

†Movements for the uplift of the depressed classes have

by Raja Ram Mohan Roy and Swami Dayanand took up this problem long before the political question arose.* Only a few of the many opinions will sufficiently prove this.

Sir P. S. Sivaswami Aiyer, in his book 'Indian Constitutional Problems,' says : "The old order hath changed. We are fast developing another symptom of democracy in the rapidly growing notion that every man is fit for any position of power or responsibility irrespective of his capacity ...there are forces at work for the amelioration of the hardships caused by the Hindu social organization and that these various movements have been in existence from a time long anterior to the publication of the venomous libel upon this land by the lady from the land of lynching."†

The reports of the Directors of Public Instruction of Bombay and U. P. are quoted in 'India in 1927-28', a Government of India publication, on page 366. The Bombay D. P. I. remarks that "The prejudice against the depressed class children is lessening. In the Deccan there is little doubt that these communities are sharing in the general awakening of the backward classes." The U. P. report says that "there is now no strong opposition to these boys reading in the ordinary board schools and the number of such boys is increasing, still been on foot for a generation and the pioneers of these movements have come from the Brahmin caste." Ibid. p. 326 and 345.

*G. T. Garrat (I.C.S. retired) in his book 'An Indian Commentary' pays tribute to the work of the Brahmo Samaj and Arya Samaj in this connection p. 59.

†Sir P. S. Sivaswami Aiyer, 'Indian Constitutional Problems,' p. 329.

The lady referred to is Miss Katherine Mayo, the author of 'Mother India.'

stronger evidence of the breaking down of caste prejudice is to be found in one Inspector's report that high caste boys were found to be reading in a number of schools for the depressed classes."

The Simon Commission, while realising the difficulties of correctly defining and classifying 'depressed classes,' recommended that some seats should be reserved for them in non-Muhammadan constituencies. According to them, "The proportion of the number of such reserved seats to the total number of seats in all the Indian general constituencies should be three-quarters of the proportion of the depressed class population of the electoral area of the province.* What is, of course, of great importance to us here is that the Commissioners themselves perceived the danger of creating further cleavage between the so-called depressed classes and the high caste Hindus, and admitted that the real crux of their problem lay in raising their social and economic status. They say: "Separate electorates would no doubt be the safest method of securing the return of an adequate number of persons who enjoy the confidence of the depressed classes: but we are averse from stereotyping the difference between the depressed classes and the remainder of the Hindus by such a step, which we consider would introduce a new and serious bar to their ultimate political amalgamation with others. Such a course would be all the more difficult to justify in those provinces where the breaking down of barriers has advanced furthest. A separate electorate for depressed classes means, as a preliminary, a precise definition of all who are covered by the term, and the boundary would be in some cases

*Simon Commission Report, Volume II, para 80.

difficult to draw. It means stigmatising each individual voter in the list, and militates against the process which is already beginning, and which needs to be in every way encouraged that of helping those who are depressed to rise in the social and economic scale."*

2. Redistribution and Status of Provinces.

As pointed out in the preceding chapter the present provinces of India were not formed on any principle. This has, consequently, resulted in a confused mass of heterogeneous parts, from the linguistic as well as cultural points of view. No doubt, many districts of India contain homogeneous populations, but the confusion in provinces is simply embarrassing. And if it had been found possible to govern such provinces for such a long time it was certainly due to the fact that till 1919 India was governed on a purely bureaucratic basis. But the Reforms of 1919 having considerably changed the form and principle of Indian administration, the necessity of redistributing the provinces has pressed itself on the people. Those who had devoted themselves to the study of future constitution of India clearly perceived this need. Mr. Lionel Curtis, discussing this problem, remarked: "To attempt the first essay in responsible government by applying it to so vast and varied an aggregate, is to prejudice the whole experiment. It is also to court failure in the last stages of this great project of creating a united and self-governing India. These vast satrapies, conceived on the scale of considerable nations, will learn, under the influence of electoral government, to think as such, and

*Ibid. para 79.

so tend to fall apart, like the overgrown provinces of China. The moment you begin to establish electoral governments, the boundaries of their jurisdictions, lightly sketched by the pencils of officials and diplomats, begin to bite into the political map like acids."*

But this problem has now assumed two distinct aspects. Firstly, there is the communal aspect which has unfortunately generated unnecessary heat and led to bitterness of feelings among the Hindus and Muslims. This specially concerns the separation of Sind from Bombay and its constitution into a province on the same footing as the other provinces of India, and the raising of the status of Baluchistan and North-West Frontier Province to the level of fully autonomous provinces.

Secondly, there is the purely linguistic or cultural aspect. Though the controversy over this part of the problem has not gone very far, still the importance of the claims of several areas of some of the present provinces can hardly be minimised or the question indefinitely postponed. All have admitted the mistake and inadvisability of keeping evidently dissimilar parts of the country together for administrative purposes. Curtis has very correctly described the position at present in Bihar and Orissa. He writes : "The Province of Bihar and Orissa, for instance, combines communities with an almost cynical disregard of the differences between them."† In this province the people of Orissa, where Oriya is spoken, demand their separation from the present province and their constitution

*Curtis. 'Dyarchy', p. 404.

†Ibid. p. 406.

into a distinct Oriya province by amalgamating the Oriya speaking districts from the northern part of Madras presidency. The linguistic confusion in Madras and Bombay presidencies has already been shown in the preceding chapter.

Discussions on Sind.—The Muslims insist that no constitution for India will meet with their approval which does not provide for separation of Sind from Bombay and its constitution into a separate province. They have reiterated this demand very often. On the other hand, a large section of the Hindu population of Sind is against this separation. The total population of Sind is 3,279,377 of which the Muslims number 2,406,123 and Hindus 840,567.* So that the Hindus who are mostly rich, fear that in case Sind is separated they would be economically subjected to the whims of the poor Muslim majority. Fortunately exact financial figures for Sind are available, and it is an admitted fact that in case Sind is separated from Bombay and constituted into a distinct province on the same footing as other provinces, the people will have to bear heavy extra taxation which shall have to be imposed to enable the province to meet the increased cost of administration. And in this extra taxation the rich Hindus who form the minority will undoubtedly be compelled to pay heavy taxes to enable the poor Muslim majority to satisfy itself. And this the Hindus refuse to bear. It is also true that on the opening of Sukkur Barrage Scheme the financial condition of the province will improve but the large sums spent by the Government of India will have to be paid back. The Nehru Committee while deploring the communal tinge that has

*Report of the Indian Central Committee, p. 26.

unnecessarily been given to the question of Sind, conceded the Muslim demand on this point and remarked : "A denial of the right to self-determination on purely financial grounds, and there are no other that we can think valid, is bound to lead to great dissatisfaction and is bound to lead to impede the progress of Sind. All the energies that should go to building up the life and work of the province would be spent in fruitless agitation. If however this right is granted, subject to the people of Sind shouldering their own financial burden, strong impetus will be given to the new province to work hard and compete with the more advanced provinces."*

When the Nehru Report was placed before the All Parties Conference held at Lucknow, differing views were again expressed in the discussions. Finally, the Sind representatives at the Conference arrived at a compromise which was incorporated in a pact since then known as the 'Sind Pact. The Pact ran :

"Simultaneously with the establishment of government in accordance with the Nehru Committee's Report Sind shall be separated from Bombay and constituted into a separate province. Provided.

(1) after an enquiry it is found :—

- (a) that Sind is financially self-supporting,
- (b) in the event of its being found that it is not financially self-supporting, on the scheme of separation being laid before the people of Sind with its financial and administrative aspects, the majority of the inhabitants favour the scheme and

*Nehru Committee Report, 3rd Edition, p. 67.

express their readiness to bear the financial responsibility of the new arrangement.

- (2) that the form of government in Sind shall be the same as in other provinces under the constitution;
- (3) that the non-Muslim minority in Sind shall be given the same privileges in the matter of representation in the Provincial and Central Legislatures as the Muslim minorities are given under the Nehru Committee's Report in areas where they are in a minority.*

In December 1928 when the All Parties National Convention met at Calcutta to discuss the report of the enlarged Nehru Committee as reappointed by the Lucknow Conference, Mr. Jinnah on behalf of the All India Muslim League pleaded before the Convention the desirability of separating Sind from Bombay and constituting it into a province without any such conditions as this Pact had put down. But this was negatived and the Pact stood unaltered.

Apart from these non-official discussions over the question of Sind, the Government of Bombay in their memorandum to the Simon Commission definitely opposed the scheme for the separation of Sind on financial and administrative grounds. But the majority of the Indian Central Committee recommended the separation of Sind and its constitution into a separate province provided the people of Sind were prepared to bear the resulting financial burden.†

The Simon Commission while sympathising

*Nehru Committee Report, 3rd Edition, p. 162.

†Report of the Indian Central Committee, p. 2.

with the demand of the Sindhis for the separation of Sind from Bombay, recommended the setting up of a commission to go into the whole question, particularly the financial and administrative aspects.* The Government of India in their despatch concurred with this view.† The Round Table Conference in London provisionally accepted the principle of separation of Sind subject, of course, to the financial question being satisfactorily settled.

Question of Other Provinces.—On the general question of a redistribution of the provinces there are no two opinions among the leaders of public opinion in India. They all agree that the present provincial boundaries require not only reshuffling but drastic changes. The Nehru Committee considered the problem and enunciated two main principles on which the question of redistribution of provinces should be considered, *viz.* linguistic homogeneity and wishes of the people. Several suggestions for constituting a number of provinces were also made and they recommended the constitution of Karnataka into a separate province as it is even at present financially strong, and for others, *e. g.* Kerala, Hindustani C. P. etc., they recommended that the question be thoroughly gone into by a committee appointed for the purpose. The All Parties Conference, in their meeting of August 1928, adopted the following resolution put from the chair; "This conference having taken into consideration the recommendations contained in the report about the redistribution and the status of provinces, accords its

*Simon Commission Report, Vol. II, pp. 25,312.

†Government of India's Despatch on the Report, pp. 15-16.

approval to them, as an integral part of the agreed constitution.

And recommends that the Commission provided for in clause 72 of the draft constitution shall in conformity with the principle of the said recommendations, and with the assistance of such committee or committees as it may consider desirable to appoint.

(a) take all necessary steps to constitute Karnataka and Andhra into separate provinces:

(b) take steps to amalgamate the Oriya speaking tracts in the different provinces and constitute this amalgamated area into a separate province if the people of that area are able to or prepared to bear the financial burden which is incidental to separation:

(c) report on the cases of C. P. Hindustani, Kerala and any other linguistic areas which may desire to be constituted into separate provinces:

(d) resettle the boundaries of Assam and Bengal, Behar and Orissa and C. P. Hindustani, Kerala and Karnataka in accordance with the principles recommended by the Committee.”*

This resolution clearly indicated the unanimous desire of the representatives of all parties to redistribute the provinces on a linguistic basis, provided that the people so affected were desirous of this change and were also prepared to bear the financial responsibilities. In fact, the necessity of redistribution of provinces had been very early realised by the Indian National Congress, who in

*Nehru Report, p. 163.

certain cases constituted separate provinces for purposes of their own organisation. But, though the principle of constitution of provinces on a linguistic basis has much to recommend itself, there are serious practical difficulties in forming linguistically homogeneous provinces. Even the Simon Commission did not suggest a solution beyond recommending the setting up of boundaries commissions, particularly for Oriya and Sind.

But the Muslim view of the status and redistribution of provinces has another and very important side. They make no secret of their intentions to create as many provinces with Muslim majorities as possible. Their object thereby is to get as much power for their people in the several of these provinces as is ultimately decided upon to give to the provinces and also to get a large share in the federal or central Indian Government by virtue of the number of the provinces with Muslim majorities. This view has most clearly been emphasized by Nawab Sir Zulfiqar Ali Khan and Dr. Abdullah Suhrawardy, members of the Indian Central Committee, in their minute of dissent appended to the report of that committee. They say: "If Sind, Punjab, Bengal, North-West Frontier Province, and Baluchistan have their own Governments which would necessarily be Muslim in character, with the rest of the Indian provinces having Hindu Governments, it will create a balance of power in India which is highly desirable."* Now if this view of the redistribution and status of provinces in the future Indian Federation is made the basic principle

*Report of the Indian Central Committee, Minute of Dissent, p. 206.

it would most certainly result in communalism having its repercussions in the whole federal government itself. Indeed, the idea expressed by these two members has grown so strong in the Muslim community that a very large section of them would not favour any constitution which ignores this claim of their community. And this was also made clear by the Muslim delegates at the Round Table Conference in London.

The Problem of the North-West Frontier Province.

The Reforms of 1919 left this province almost unaffected beyond giving it representation in the Central Legislature. But on the persistent demand of the Muslims the Government of India appointed the Bray Committee in 1924 to report on the desirability of introducing the Reforms into that province. The Committee while definitely opposing the grant of full Reforms to the province, only recommended the constitution of an elected legislature and the appointment of a minister and a member to form the executive council, but it recommended the continuance of the control of the Government of India. In 1928 the question of introducing the 1919 Reforms again came up before the Assembly and even the late Lala Lajpat Rai, the leader of the Hindus, supported the motion which was passed. But the Government of India neither acted upon the recommendations of the Bray Committee nor on the Assembly resolution.

Now before entering upon the discussions so far held on this question it is of great importance to understand the strategical position of the

province and its previous history. The province lies between the parallels of $31^{\circ} 4'$ and $36^{\circ} 57'$ of North Latitude and $69^{\circ} 16'$ and $74^{\circ} 7'$ lines of East Longitude. Its area is approximately 38,655 sq. miles of which 13,193 sq. miles are under British territory and the remaining held by the tribes who are under the control of the Agent to the Governor-General. The province is bounded on the north by the Hindukush and the Pamirs, on the south by Baluchistan and Dera Ghazikhan district of the Punjab, on the east by the Punjab and on the west by Afghanistan. There are three natural parts, the cis-Indus district of Hazara, the narrow strip between the Indus and the Western hills, comprising the districts of Peshawar, Bannu, Kohat and Dera Ismail Khan, and the rugged mountains on the west of these districts extending upto Afghanistan. The climatic conditions are extremely varified, Dera Ismail Khan is one of the hottest areas in India while the mountain region is extremely cold.

The Pathan tribes who inhabit the province have for centuries been independent of the control of any neighbouring kingdom. It was during the 15th and 16th centuries that they descended from the rugged mountains and settled in the plains. They soon came into conflict with the Moghals and even the imperious Aurangzeb had to leave them practically independent. "The invasion in 1738 of Nadir Shah who traversed the Province from Peshawar to Dera Ismail Khan, is a landmark in the history of the frontier. From his death to the rise of Ranjit Singh the frontier districts remained an appendage of the Durrani Empire. Little control was exercised by the rulers of Kabul, and the country was administered

by local Chiefs or Afghan Sardars very much as they pleased.”*

The Sikhs began to invade the country in 1818 and within less than two decades they practically became masters of the country, and in 1834 when General Hari Singh took Peshawar Fort, the Durrani control came to an end. The British, on 29th March 1849 proclaimed the annexation of the frontier districts and in 1850 these districts were placed under a Commissioner who ruled them in the way in which the Punjab was ruled. But the Lahore Board of Administration directly raised the Punjab Frontier Force which at that time consisted of 5 regiments of cavalry, the Corps of Guides, 5 regiments of infantry, 3 light field batteries, 2 garrison batteries, 2 companies of sappers and miners and the Sind Camel Corps.† In 1866 this force was removed from the control of the Board and amalgamated with the regular army. During the Mutiny the Pathans showed signs of rebellion here and there but they were soon suppressed. From 1857 to 1860 though frontier tribes on the North were peaceful, the Waziris created unrest. In 1860 an expedition was sent to punish the Mahsuds. It was in 1863 that the most serious Wahabi revolt took place and it took full five years to subdue the Wahabis and establish peace. Though peace followed, experience showed the necessity of special measures and the principle of employing Militia and Levies as the first line of border defence was adopted in 1872-73 and this was remodelled and brought upto date in 1912.

*Administration Report of the North-West Frontier Province 1921-2, p. 6.

†Ibid.

But during this time there were several occasions of most serious unrest following on British relations with Afghanistan (1877 to 1881). From 1890-1897 political control was extended in almost all directions over the tribal area including Dir, Swat, and Chitral, the three states in the tribal country. But the western boundary of the tribal country and therefore the international boundary between Afghanistan and North-West Frontier had not been settled. But work was taken into hand so that "The year 1895 thus closes with the demarcation of most of the Durand Boundary and the extension of British influence over the Sherani country, the Samana, the Kurram Valley, Waziristan, and the Chitral road."* But the Pathans regarded this as a step towards annexation of their territory and this feeling led to the outbreak of the most serious disturbance on the Frontier which resulted in *Jehad* against the British in which all tribes except Mahsuds joined. They were vigorously suppressed by regular military operations and exactions of fines.

It was left to Lord Curzon to formulate a definite policy to be pursued with regard to this territory. He summed up his frontier policy in these words, "withdrawal of British forces from advanced positions, employment of tribal forces in the defence of the tribal territory, concentration of British forces in British territory behind them as a safeguard and a support, and improvement of communications in the rear."† He therefore separated the frontier districts from the

* Administrative Report of the North-West Frontier Province, for 1921-22, p. 9.

Punjab, formed them into what is now called the North-West Frontier Province, and placed it under a Chief Commissioner who was and is directly responsible to the Government of India, (1901)

Since then the Mullahs and fanatic Chiefs have been exciting the tribes off and on and their activities have repeatedly created troubles on the frontier, which have been suppressed from time to time, sometimes with the show of military force. In 1919 the last Afghan War broke out when the ex-King Amanullah Khan succeeded his father, the late King Habibullah Khan. In the treaty that followed, independence of Afghanistan was recognised and the annuity of Rs. 18 lacs till then paid to the Amir for maintaining peace on the border was stopped.

This, in brief, is the political history of this province whose problem has acquired an importance all its own. The composition of the present population of the province has created certain difficulties. At the census of 1921 the population of the North-West Frontier Province was as follows :—*

Religion.	Population.	Percentage of population.
Muhammadans ...	2,062,786	91.62
Hindus ...	149,881	6.66
Sikhs ...	28,040	1.25
Christians ...	10,610	.47
Parsis ...	20	
Jains ...	3	
Total ...	2,251,340	100

Then again, of the total Muhammadan population the Pathans form an important factor distri-

buted in the five settled districts as follows :—*

District	Population of Pathans only	
All Districts	...	884,269
Hazara	...	55,803
Peshawar	...	510,087
Kohat	...	103,406
Bannu	...	158,233
Dera Ismail Khan	...	56,741

Besides the Pathans there are non-Pathan Muhammadans who are mostly converts from Hindus and who still follow some customs of their Hindu ancestors. Then, besides their relative population, the followers of different religions are economically also different from one another. The Hindus are financially stronger. "The bulk of the trade and commerce of the Province is in their hands and they are naturally concentrated in the towns. Their influence and position in the Province are, on account of their wealth, out of proportion to their numerical strength. Although for every Hindu in the Province there are 15 Muhammadans, the total number of literate Hindus is larger than that of Musalmans who can read and write, and in the matter of English education the Hindus are far ahead of their Musalman brethren."† Income-tax is largely paid by the Hindus and land-revenue by the Muhammadans. The Sikhs are mostly in the army. They almost all speak Pashto, although in the northern part of the province Lahnda or Western Punjabi is also spoken. Then again in the Trans-Border area the Pathan tribes are under political agencies of Malakand (Dir, Chitral, and

*Administrative Report of the North West Frontier Province for 1921-22, p. 26.

†Ibid. p. 27.

Swat), Khyber, Kurram Valley, Tochi, and Wana. Of this border the enumerated population is 54,470 and estimated population is 2,770,666. So that taking the figures for the whole Province the Hindus, although the most literate and wealthy, are numerically extremely weak.

It is this numerical, educational and financial disparity in the composition of the population of the Province, which has given rise to controversies regarding the future status of the Province in the Indian Government. The Hindus, conscious of their own position from the several points of view, and also of the character and past history of their Musalman brethren, are not willing to accept the same independent status for the Province as is contemplated for all other provinces of India inside the federation. As for the Musalmans they are unwilling to accept a position of inferiority for the province in which they form such an overwhelming majority. The Hindus desire that in the federation the North West Frontier Province should continue to remain under the control of the Government of India in which they expect that their interests will be safeguarded by the Hindu majority.

The Nehru Committee, while recommending the same status of a fully autonomous province for N. W. Frontier Province as for others inside the Indian federation, provided for the same safeguards for the Hindu minority in this Province as for the Muslim minorities in other provinces of India. Their chief argument was that no province could with any reason be denied the right to govern itself. The Indian Central Committee without any reference as to the ultimate future status of the Province inside the federation

had only recommended the extension of Morley-Minto Reforms to this province for the present.* While Sir Zulfiqar Ali Khan and Dr. Suhrawardy, in their minute of dissent, had recommended the introduction of the Reforms of 1919 into the province, they refrained from recommending the placing of this province on the same status as the other provinces of India as they opined that the province was not yet fit for such a measure.†

The Simon Commission have expressed their concurrence with the view of the Bray Committee who declared that "even in the internal administration, the peculiar position of the province, its financial dependence on central revenues and the close and at times inextricable connection between its internal and external affairs...all these factors combine to call for a wider power of control and a closer supervision by the Governor-General than he exercises over a Governor's Province".‡ And though the Commission have recommended a more democratic constitution for the province, they have made it perfectly clear that "the situation of the province and its intimate relation with the problems of Indian defence are such that special arrangements are required. It is not possible, therefore, to apply to it automatically proposals which may be suited for provincial areas in other parts of India."§ The Chief Commissioner of N. W. F. P. though admitting the necessity of treating the problem of this province in a way different from other provinces, recommended a

*Indian Central Committee Report, p. 60.

†Ibid. p. 208.

‡Bray Committee Report, p. 9.

§Simon Commission Report, Vol. II, para 120.

scheme in advance of that of the Commission. The Government of India, too, generally accepted the Chief Commissioner's scheme and said: "The broad point is that in making the dividing line between the central and provincial subjects, regard would be had to the need for classifying as central certain subjects of all India importance peculiar to the present administration of the North West Frontier Province, which could not properly be entrusted to the provincial legislature."* The North West Frontier Sub-Committee of the Round Table Conference, London, while recommending reforms for the province, clearly laid down that there must be special safeguards in regard to the subjects of all India importance, particularly defence and finance.

Baluchistan.—This province is at present under a Chief Commissioner who is directly responsible to the Government of India. The population at the census of 1921 was 420,648 of which the Muslims numbered 367,282 *i. e.* 87·31% and the Hindus 38,678 *i. e.* 9·20%, while the rest are others.†

The Muslims demand the same status for this province inside the federation as for other provinces. The Nehru Committee have recommended it and there appears to be little opposition to this demand of the Muslims. The Simon Commission do not recommend equality of status for this province and the Government of India have accepted their view. But both of them recommend a direct representation of this province in the Central Legislature.

* Government of India's Despatch, para 77.

† 'Statistical Abstract for British India', pp. 14-15.

To sum up, the whole question of the redistribution or status of provinces resolves into two factors, *viz.* linguistic and communal. To the first there can be or is little opposition while to the second there is. The Muslims want a large number of provinces in which their co-religionists predominate, and thus they hope to exercise considerable influence inside the federation. The Hindus oppose them in certain cases on financial and political grounds and wish some of these provinces to remain under the federal government.

3. The Indian States.

From the constitutional point of view the problem of the Indian States *vis-a-vis* the Indian federation is of extreme importance. That any constitutional changes in British India are sure to have their repercussions in the States cannot be gainsaid. The Princes realise it no less than the British Indian politicians. And it is primarily for this reason that recently they have all begun to tackle the problem and suggest lines of co-operation between these two halves of India.

And while the main problem is the future adjustment of the States taken as a whole within the federation, the States' subjects demand that security of their rights should be guaranteed by the Government of India. This raises a most important constitutional issue as to the right of the Government of India to interfere in the internal administration of the States. The Indian Princes claim that the treaties between the British Crown and the States did not contemplate in the latter party the inclusion of the States' subjects and, therefore, in any future constitutional arrangement with the States only

the Princes have to be taken into account and not their subjects. This inference they base on the definite understanding that the Princes are free and fully sovereign in their internal affairs. They do not, therefore, allow to their subjects as a distinct party a place in any future constitutional arrangement in India. This was made clear in the words of the resolution passed at the Princes' Conference held at Bombay on April 19, 1928. The resolution, moved by the Maharajah of Patiala in the name of the Standing Committee of the Chamber of Princes, ran :

"This meeting of rulers and representatives of State Governments

.....

(b) recognises that the adjustment of these relations so as to secure the political future of one-fifth of the human race calls for the highest statesmanship on the part of His Majesty's Government and people of British India, and on the part of the States.

(c) reaffirms the abiding determination of the rulers of Indian States, as recorded in the last session of the Chamber of Princes, to ensure the rule of the law in their States and to promote the welfare and good government of their States.*

Now this resolution, while recognising the right of the people of British India along with their Government to settle the future relations, did not recognise the right of the States' subjects beyond reference to the desire of the Princes to apply the

*Quoted in 'Indian States Register and Directory,' pp. 294-5.

rule of law to their administrative system.

The Maharajah of Bikaner made the point still clearer in his speech of September 9, 1928. He said that "in matters affecting the States, the lawful authorities with whom negotiations can be conducted, are the rulers and the Governments of the States, whether such Governments profess autocracy, bureaucracy or democracy; and except in the case of 'Mobocracy,' no Government worthy of the name, could for a moment agree for such negotiations to be bilateral, and conducted on the one side with the lawfully constituted Government of the State or country and at the same time on the other side, with the millions of subjects of a State or country, an impossible and obviously utterly impractical proposal which would be nothing but Mobocracy—unbridled Mobocracy, leading to a state of affairs, which I have aptly seen defined as the "chaos of Mobocracy."

"It is for these reasons also that the Princes and States have not put forward specifically in their scheme and proposals the subjects of the States as a distinct party apart from the States as a whole; though as I have already made clear, all State subjects stand fully to benefit from any measure resulting from the labours of the Princes and their Governments."* The Government of India and the British Government, too, concurred with the main view of the Princes and they did not include a single representative of the States' subjects in the States' delegation to the Round Table Conference in London.

*Quoted Ibid. pp. 158 29. But then according to the Maharajah of Bikaner the people of British India cannot be made a party to any discussions regarding constitution making for the whole of India. And this is in opposition to the resolution passed by the Princes at Bombay.

The States' subjects repudiate this claim of the Princes. In their All-India Conference held at Bombay on 17th and 18th of December 1927, they passed certain resolutions. Resolution VI ran :—

“This Conference of Indian States' people urges :—

That for a speedy attainment of Swarajya for India as a whole, the Indian States should be brought into constitutional relations with British India and the people of India and the States should be assigned a definite place and an effective voice in all matters of common concern in any new constitution that may be devised for the whole of India.”*

They also protested, later on, against the non-inclusion of their representatives in the States' delegation to the Round Table Conference.

But apart from this question which concerns mainly the Princes and their subjects there is the broad question of the relations of the States with the Government of India *vis-a-vis* the Crown. It is this part of the problem which vitally concerns the position of the States inside the federation. This again has two aspects, *viz.* Political and Fiscal.

The Political Aspect.

With regard to the political relations between the States and the Government of India, the Princes state that their treaties and engagements were made with the British Crown irrespective

*Quoted in 'Indian States Register and Directory 1929,' at page 304.

of the Government of India, and that the Government of India are only agents of the Crown to carry out the terms of the treaties. They say that the Crown is the Paramount Power and it cannot delegate the exercise of its authority over the States to any party without the consent of the Princes and their Governments. The Standing Committee of the Chamber of Princes obtained legal advice from some of the foremost constitutional lawyers in England. The following extracts from the lawyers' advice are interesting in this respect :—

“The mutual rights and obligations created by treaty and agreement are between the States and the British Crown. The Paramount Power is the British Crown and no one else; and it is to it that the States have entrusted their foreign relations and external and internal security. It was no accidental or loose use of language, when on the threshold of dealing with the subject of the Indian States, the Montagu-Chelmsford report described the relationship as a relationship with the British Crown; for the treaty relations of the States are with the King in his British or, it may be, in his Imperial capacity, and not with the King in the right of any one of his Dominions. The contract is with the Crown as the Head of the executive Government of the United Kingdom, under the constitutional control of the British Parliament.”
(Butler Committee Report, pp. 73-74)

“The obligations and duties which the parties to the treaties have undertaken

require mutual faith and trust; they demand from the Indian Princes a personal loyalty to the British Crown and from the British Crown a continuous solicitude for the interests of each State; and they entail a close and constant intercourse between the parties." (Ibid. p. 74)

As regards the carrying out of these obligations and duties they opined that the Crown "must carry out those obligations and duties by persons under its own control and cannot delegate performance to independent persons, nor assign to others the burden of its obligations or the benefit of its rights. So the British Crown cannot require the Indian States to transfer the loyalty which they have undertaken to show to the British Crown, to any third party, nor can it, without their consent, hand over to persons who are in law and fact independent of the control of the British Crown, the conduct of the States' foreign relations, nor the maintenance of their external or internal security." (Ibid. p. 74)

This view, in fact, represents the view of the Princes themselves. It comes to this that supposing the Indian States prefer to have their relations with the British Crown alone and British India attains dominion status without the States joining it, the Crown must always keep an army in India to enable it to discharge its duty of guaranteeing security to the States. This ultimately means that British India cannot become a fully self-governing dominion.

British Indian politicians, on the other hand, refute this interpretation of the relations of the States with the Crown. They say that even

supposing that it was the British Crown who made the treaties with the States, it did so only in its capacity as ruler of British India and not in its capacity as sovereign of England or in its personal capacity. The Nehru Committee, dealing with the contention that the treaties were not made with the Company or with the Government of India, say: "This proposition to our mind is untenable historically and legally, and in any case, whatever may be the true legal theory, actual practice shows that the Indian Princes and States have dealt with the Government of India, and submitted to its rulings and interventions, and have never dealt with the "Crown" or His Majesty's Government. The fact that there may be personal relationship between His Majesty and an Indian Prince does not in our opinion alter or affect the real legal position or the interpretation of that legal position in actual practice."*

Sir P. S. Sivaswami Aiyer makes it clearer still. He says: "The contention that the sovereign of a country who enters into a treaty does so in his personal capacity and not as sovereign of that country is too absurd to be maintained in the twentieth century. Supposing the people of England chose to set up a republic in place of the constitutional monarchy, it cannot be contended that the treaties with the monarch would cease to be enforceable. Or again, let us suppose that the Queen of England was a despotic sovereign at the time of the treaties and she subsequently granted a parliamentary constitution to her people. Could it be said that the treaties would become unenforceable, because they were.

*Nehru Committee Report, pp. 76-77.

entered into with the Queen, or that she had no power to change the constitution of the country except at the risk of forfeiture of the benefits of treaties? Could it be said again that the treaties of Indian Princes were entered into with the British Sovereign in his capacity as the sovereign of the United Kingdom divorced from his sovereignty over his Indian territories? The matters governed by the treaty relate to persons and things in India and arise out of the relations of the Princes with the sovereign of British India, and it would be an unthinkable constitutional absurdity that the right to enforce the treaties should vest not in the authorities for the time being charged with the administration of India, but in some other authority.”*

Apart from legal theories and arguments on this question, in actual practice the Princes have always dealt with the Government of India and have acted as subordinate to its authority. “There is surely no clearer proof of subordination to, or of the nexus with, the Government of India than the payment of tribute to the credit of the revenues of India.”†

Happily the Princes realise that their destinies are bound up with those of British India and all constitutional changes in British India are sure to affect their States. But what they demand is that in any federal solution of the Indian problem their just rights and claims should not be overlooked. They complain that under the plea that the States are in subordinate cooperation with the British Government undue encroachments have been made upon their rights and independence.

*Indian Constitutional Problems, pp 213-214.

†Ibid. pp. 212-213.

And they fear that "As long as the phrase subordinate cooperation is left undefined and the limits within which "advice" may be given are not understood and prescribed, the Indian States must continue to be placed at the mercy of the Executive Government of India and its officers in the Political Department."*

And they think that their demands would be met by keeping in mind and providing for what the Gaekwar laid stress on in his speech, at the time of state banquet to the Viceroy. His Highness mentioned four points: "Firstly the need for the complete autonomy of the States in internal affairs; secondly, the strict observance of our treaties, both in the letter and the spirit; thirdly, the establishment of an independent Court of arbitration to which both sides can appeal, as of right; and lastly, the devising of some means whereby the States will be able to speak with weight in all matters that are common between them and the rest of India."†

And they wish that at the time of final solution they should not be handed over to a third party, responsible Government of India, by the Crown without their own consent. This was one of the most important of the conditions they had prescribed. The Butler Committee concurred with this view. They said, "We feel bound, however, to draw attention to the really grave apprehension of the Princes on this score, and to record our considered opinion that, in view of the historical nature of the relationship between the Paramount Power and the Princes, the latter

*The British Crown and the Indian States, p. 112.

†His speech of January 21, 1930, reported in the Pioneer of January 24, 1930.

should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian legislature.”*

The Simon Commission recommended the setting up of a Greater India Council composed of the representatives of the States and British India, to confer upon subjects common to both. No doubt, they admitted that the goal of the States and British India should be an all India federation but they said that the evolution of it would be slow and it cannot be rashly pressed.† To what extent the Commissioners failed to grasp the immediate need of the situation and to suggest a solution therefor, can be easily judged from the proceedings at the Round Table Conference in London. The speeches of the Maharajas of Bikaner, Alwar, Baroda and Patiala and the Nawab of Bhopal surprised even the greatest optimists among the delegates and changed the whole aspect of the major problem. The Princes accepted the principle of immediately establishing an all India federation and they expressed their willingness to enter the federation at once. The greatest contribution, however, to the cause of an all India federation was made by Sir Tej Bahadur Sapru whose speech at the Round Table Conference, recommending a federal scheme for India, will go down to posterity as a monument of brilliant constructive statesmanship. The soundness of his reasoning, the brilliance of his advocacy and the practicability of his scheme converted many a waverer to the federal cause. Lord Reading on behalf of the British Liberals

*Butler Committee Report, p. 32.

† Simon Commission Report, Vol. II, para. 228.

and Lord Peel on behalf of the Conservatives accepted the general principles of his scheme. And the eventual resolution of the Conference unanimously passed on January 19, 1931, set at rest all the controversies and misgivings regarding the desirability of establishing a federation of British India and the Indian States.

The Fiscal Aspect.

The second question regarding the future of the Indian States in the Indian constitution is the fiscal relationship. The Directorate of the Princes' Chamber's Special Organization has prepared an outline of their case. In it they have divided the fiscal question into two parts, *viz.* their own obligations to the Government of India, and the latter's obligations to the former.

The Princes' Obligations.—They say that the only obligations which do possibly result from their relationship with the Paramount Power arise out of the internal and external security condition guaranteed to them in return for their giving up the right over their foreign relations into the hands of the Paramount Power.* This, according to them, is a contractual obligation on the Crown to keep the States safe from all danger and the Princes need contribute nothing towards

* A large number of States hold treaties in which the Crown has promised them protection against external aggression in the clearest terms. Other States have, strictly speaking, no treaties, but their relationship with the Crown is determined by Sanads and other consensual engagements. The essence of that relationship is the guarantee of defence by the Paramount Power. The Government have assured them in various official pronouncements that their territories should be preserved from invasion, and it is assumed that the duty of defending them rests upon the Government.

the cost of India's defence. Still the Princes have been helping the Paramount Power off and on in defence affairs. "That the Princes do voluntarily contribute to defence and do it with both hands is *nihil ad rem*. Their loyalty to the King is the pride of the Empire and the glory of the Indian States. But free gifts import no obligation, however often repeated."*

Their chief complaint is that in the determination of the foreign policy as well as the declaration of war they have no hand although they are as much affected by these as British India; and therefore they cannot be charged with the defence cost. Even then, they say, the Princes' contribution to the Crown, as estimated on the basis of cession of territories for subsidiary forces and also of cash payments made during the Company's rule, comes to a sum equivalent to the maintenance charges of 53,693 infantry and 20,148 cavalry, with a certain amount of artillery, or say 74,500 troops in all.

The total army of British India is 230,000 and estimating roughly that one-fourth of it is required for internal peace of British India, there remain 172,000 men only for external defence. The total cost of the Army in 1926-27 was Rs. 56 Crores and three-fourths of it comes to Rs. 42 Crores, which is spent on external defence. Calculating the defence charges as per head of the total population of India, the States are responsible for a sum of about 9 Crores only.†

But the States themselves maintain an army of 50,000 men of whom at least 25,000 are fit for

*The British Crown and the Indian States, p. 164.

†Ibid. p. 168. But this is only a rough calculation or guess work.

external defence work. Hence the total of the defence army comes to 172,000 men plus 25,000 men. "Of this, on a population basis, the States would be responsible for 44,500 men, that is, for nearly 20,000 more troops than they do in fact contribute. The cost of these troops, if despite other considerations it were chargeable to the States, would create a liability for some Rs. 4 Crores."* And to this extent they accept their liability to the Government of India.

Debt and Communications.—They say that as the States have never had any voice in the general administration of India as a whole, they cannot be expected to shoulder the responsibility for the debts of the Government of India, which have been incurred for these purposes and the services connected therewith. And they, therefore, say that "In so far as such services, whether welcome or unwelcome, are rendered, pursuant to the terms of a treaty or other contract, no obligation to pay can attach to the State unless the contract imposes it; and in any event it must be a particular obligation of one State and not a general obligation attaching to all."†

With regard to the means of communications they say that the ports in British India are a paying concern and the States do not get any share of the profits accruing from them. "The roads are provided in British India by the Provinces, in the States by themselves. If the population of the States use the roads in British India, the people of British India in their turn use the roads in the States. Considerable distances of high-ways such as the Agra-Bombay Road, lie

*The British Crown and the Indian States, p. 169.

†Ibid. p. 173.

through States, and they are kept in a better condition than local traffic demands, largely for the benefit of British Indian motorists. Certain States, moreover, have been saddled with roads or bridges, originally built for strategic purposes, which bring the States no benefit comparable with their cost of upkeep and which have been superseded by railways since they were first made. The States provide their full share of roads and bridges and they are under no liability on this account.”*

Posts and Telegraphs.—In this department of the Government of India, which is run on a more or less commercial scale, there is a deficit and calculating the States’ share of this loss it comes to Rs. 80,000 in 1926-27, and Rs. 4,40,000 in 1927-28. But as most of the post offices lie in British India, and as the Government of India incurs this loss mainly because many of the post offices it has opened in its own territory run at a loss, the States cannot be held liable for any share of that loss.†

Public Works.—They say that the idea underlying the policy of the Government of India in this department is the good of British India and not of the States. By citing the case of the United Provinces Government’s dealings with the State of Bharatpur regarding water from the Jumna Canal, they refuse to share any part of the cost of this department.‡

This, in short, is what they say regarding those spending departments of the Government of India in which the States may be held liable for any amount of the cost.

*The British Crown and the Indian States, pp. 176-77.

† Ibid. pp. 177-181.

‡ Ibid. 181-182.

The States' Contribution to the Government of India.—But they also claim that on the income side there are several items in which a part of the Government's income is derived directly as well as indirectly from the States' subjects. The customs and tariff policy of the British Indian Government is not at all determined or influenced by the States but is solely dictated by what is for the benefit of British India alone. And as British India is far more industrially advanced than the States, it is the latter's interest to be protectionists. Therefore, the States deserve a part of the Government's income from the customs and tariffs charged on articles consumed in the State territories. The following tables*, they say, indicate the States' contribution to customs revenue and their share of it according to population:—

The States' Contribution to Customs Revenue

	<i>Lakhs of Rupees</i>
Total sea Customs paid by States ...	731
Total Customs Revenue, Import Export and other duties ...	4,738
Percentage of total paid by the States ...	15·4 p. c.
Total cost of collection and other charges	81
15·5 per cent. of cost ...	125
Net Customs paid by the States ...	718
Deduct 77·5 per cent. of refunds paid to certain States ...	12
Net Contribution of States to Customs Revenues ...	706

States' Share of Customs Revenue in proportion of population:—

	<i>Lakhs of Rupees</i>
Total Import duties ...	3,996
Gross share of States in proportion to population ...	899
Cost of Collection ...	15
Net share of States ...	884

* The British Crown and the Indian States, p. 191.

In this way they conclude that the States contribute Rs. 706 lakhs of rupees to the customs revenue of the Government of India or Rs. $1\frac{3}{4}$ crores of rupees less than their share according to population. And they conclude: "The States are ready to cooperate in any policy which will benefit Indian industry, provided their own wishes and interests as consumers and producers are given due weight when policy is being decided".*

Excise Duties.—Their case under this head comes to this. The Government of India follows its own excise policy uninfluenced by the States or without their consultation. The policy of the British Government with regard to opium, which they have decided upon in consultation with other nations, adversely affects most of the opium producing States who have vast stock of opium lying unsold simply because of the Government of India's policy which does not permit its export to opium eating countries. And thus those States suffer. Again, in those tracts of their territories over which the States have given the Government of India complete sovereignty—mostly at Railway stations and Railway territory within the States—liquor is sold cheaper than only a few yards within State territory much to the financial loss of the States concerned. And this also encourages smuggling into States. They, therefore, claim, leaving aside collection expenses, that the States actually contribute to the extent of Rs 39 lakhs to the Government of India.

Other Contributions.—The salt monopoly held by the Government of India is a profitable concern and as only few of the States are allowed any compensation for foregoing their right to manufacture

* The British Crown and the Indian States, p. 192.

salt, the States actually lose to the extent of rupees ninety lakhs per year.*

In railways also they lose their due share of the profits derived by the Government of India although the States have made considerable sacrifices from time to time in entering into agreements regarding transfer of sovereignty rights over land required for railway construction. This loss they put at Rs. 120 lakhs of rupees per year.†

The Government of India does not allow States to have their own currency and mints—except in very few cases and on a limited scale—and it derives large profits from this source to the corresponding loss of the States who use its currency and coinage. They estimate their contribution to the Government in this department at Rs. 86 lakhs per year.‡

The States' subjects trading in British India pay income tax to the Government of India to no small extent and this is a direct loss to the States. And when the States tax the incomes of their subjects who have already paid income tax in British India, the people so affected suffer considerably. This contribution as income tax, paid by the States' subjects to the Government of India, they claim for themselves.

To sum up, the following table§ gives the amount of contribution paid by the States into the treasury of the Government of India :—

* The British Crown and the Indian States, p. 199.

† Ibid. p. 204.

‡ Ibid. p. 204 and p. 209. Based on the figures for 1926-27.

§ Ibid. p. 213.

Contribution of States.

	<i>Lakhs of Rupees</i>
Sea Customs	... 706
Salt	... 93
Railways	... 120
Currency and Mint	... 86
Income tax	(not calculated)
Excise	... 39
	<hr/>
Total	... 1,044
	<hr/>

And deducting from this sum the amount of Rs. 400 lakhs as their liability to the Government of India for defence, the States claim a *net* amount of Rs. 644 lakhs to be adjusted to their account in any future arrangement.

4. The Form of the Constitution.

The discussions regarding the future constitution of India have centred round two points, *viz.* whether it should be based on dominion status for India within the British Empire or on independence out of the Empire, and in either case whether it should be federal or unitary in character.

Excepting an important section of the Indian National Congress which has definitely declared itself in favour of independence out of the British Empire, other political parties are in favour of dominion status. And as this question largely affects the relations of the provinces and Indian States with the Government of India, it is first taken up here. It was for the first time at the Madras Congress of 1927 that the Congress passed a resolution defining its goal as complete independence. But when in 1928 the Congress invited all other political parties to a conference, a select

committee presided over by Pandit Moti Lal Nehru, the leader of the Swarajists, was appointed to frame a constitution for India. The report of the Committee defined India's goal as Dominion Status, *i. e.* the position occupied by Canada, Australia, New Zealand, and South Africa within the Commonwealth of British Nations. In fact, the majority of the Committee held the view that their terms of reference required them to base their conclusions on that model and hence the trend of their recommendations followed that principle. "The principles of the constitution which we have suggested are therefore meant for a dominion constitution but most of them, of course, can be applied in their entirety to a constitution of independence. Our deciding, as a Committee, in favour of such a constitution simply means that the maximum degree of agreement was only obtainable on this basis."* So that the Committee perceived the necessity of arriving at an agreement acceptable to all parties. But at the All Parties Conference held at Lucknow, although the general principles underlying the report were accepted almost unanimously, the main resolution regarding the future status of India as a self-governing dominion was passed only when the supporters of the independence creed had been satisfied by providing that they were free to advocate their point of view. Also Pandit Jawahar Lal Nehru was permitted to read a statement on behalf of that party, explaining their faith in independence. The main resolution ran :—

"Without restricting the liberty of action
of those political parties whose goal is

*Nehru Committee Report, pp. 24-25.

complete independence this Conference declares.

- (1) -----
(2) that such form of government shall in no event be lower than that of any self-governing dominion.”*

At the Calcutta Convention the question was again raised and discussed. But eventually the motion in favour of dominion status was agreed to, though not without statements being allowed to be read in favour of independence on behalf of the Independence for India League, the Trade Union Congress, the Swadhin Bharat Sangh, and the Madras Mahajan Sabha. An amendment was moved, which ran: “India shall rank as a free nation among the free nations of the world”.† The argument advanced in favour of the amendment was, “Dominion Status might be a practical idea for Canadians, Australians and other people who were akin to the English in race, tradition, and culture but it could never be a practical proposition for India whose people had no common bond with the British. The only bond was the bond of servitude and inferiority.”‡

Finally, however, the Liberal Party's viewpoint as put forward by Dr. Besant, Mr. Chintamani and Sir C. P. Ramswami Iyer prevailed, and the motion for dominion status was agreed to. It is worth mentioning here that the Liberal Federation, the Muslim League, the Hindu Mahasabha, and a section of the Congress,—all of them all India parties—were definitely

* Nehru Committee Report, p. 161.

† Proceedings of the All Parties National Convention, page 46.

‡ Ibid. p. 47.

committed to dominion status.

The controversy regarding the basis of constitution had actually been accentuated by the vagueness which till recently surrounded all previous declarations and announcements of British policy in India as made by the Government of England. And when Lord Irwin's announcement of November 1, 1929, defining the goal of British policy in India as Dominion Status was made, an overwhelmingly large section of politically minded India was satisfied with the preciseness of the term. But the Congress at Lahore, owing to differences regarding the time when India would be given full dominion status, definitely committed itself to the policy of independence as India's immediate and not ultimate goal. And had the British Government promised to grant India full dominion status at the Round Table Conference, the Congress—at least a very vast majority of it—would have been satisfied. So that, barring the differences regarding the time table of India's progress towards full self-government, all parties in India have accepted the dominion type of Government for the country. In England, too, all the three political parties have now admitted that the ultimate goal of India's destiny is dominion status, the main difference in their views being only one of time and speed necessary for the attainment of the goal.

The advocates of the dominion type of Government have placed before the country their detailed proposals regarding the various aspects of the constitutional question. But the independence group has so far failed to evolve any such scheme, on the ground that that is a question to be decided after independence has been actually

won. Therefore, it could not be known what their intentions are regarding the future relations of the Indian States with the Government of Independent India—a question which would have thrown some light on the future constitution.

Federal versus Unitary Type.—Mr. Montagu and Lord Chelmsford, for the first time, made some mention of the future form of the Indian constitution for the whole of India including the States. They wrote: "Looking ahead to the future we can picture India to ourselves only as presenting the external semblance of some form of "Federation." The provinces will ultimately become self-governing units, held together by the central Government, which will deal solely with matters of common concern to all of them. But the matters common to the British provinces are also to a great extent those in which the Native States are interested—defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs. The gradual concentration of the Government of India upon such matters will therefore make it easier for the States, while retaining the autonomy which they cherish in internal matters, to enter into closer association with the central Government, if they wish to do so. But, though we have no hesitation in forecasting such a development as possible, the last thing that we desire is to attempt to force the pace. Influences are at work which need no artificial stimulation. All that we need or can do is to open the door to the natural developments of the future."* It was on this

*Montagu-Chelmsford Report, p. 192. Though the authors of the report thought of India as presenting only an external semblance of federation, we advocate the necessity of a strong federation for India in the next Chapter.

future picture that they based their proposals for introducing reforms in the Government of British India, and also suggested the creation of the Chamber of Princes to enable them to deliberate on all matters common to their order and British India.

The Reforms of 1919 undoubtedly encouraged the spirit of local freedom in all provinces, at least in all those functions of government which had been classified as 'provincial.' When the Reforms Enquiry Committee of 1924 was appointed, the major part of the evidence tendered before it by persons who had an actual experience of the working of the reformed constitution—whether as ministers or as executive councillors—was in favour of giving full provincial autonomy to the provincial governments within the sphere of administration assigned to them.

The Nehru Committee proposals have been largely based upon a federal constitution for India. This is very well illustrated by two of their proposals. With regard to the provincial legislature they recommended: "The legislative power of a province shall be vested in the King and the local Legislative Council."* And as the provincial executive was recommended to be responsible solely to the provincial legislature, the provincial governments were contemplated to be fully independent in their sphere of administration. They also recommended the creation of a Supreme Court for India, which, among other matters, was to be given original jurisdiction in all matters arising between the provinces, and it was also to interpret the constitution. Both these attributes are

* Nehru Report, para 100 of the Recommendations on page 82.

common to the Supreme Courts of all federations. Dealing with the problem of the Indian States the Committee definitely committed themselves to the federal type of constitution for India. They wrote: "But if the constitution of India is to be a federal one, as we think it might well be, the position of the Indian States in relation to that federation appears to us to call for a definite determination and the ideas on the subject require to be cleared up."* An almost similar idea runs throughout the Supplementary Report of the enlarged Nehru Committee who, after stressing the point that in recent time there has been a tendency towards a compromise between federal and unitary type of constitution, they say, "In drawing up our proposals we have deliberately declined to be overborne by one type or the other. We have borne in mind the peculiar position of India and have provided for the development of the fullest possible provincial life compatibly with national interests. We have kept before us the peculiar problem of minorities in various provinces, which, in our opinion, necessitates the reservation of a certain measure of interference, in cases of grave emergency, on the part of the central government. The limits we have provided for provincial activities and functions are very wide, and within these limits provincial governments will be masters within their own houses, free from the control of the central government. It is obvious, however, that there is a very large field of state activity which, in any system of stable administration, must be covered exclusively by the central government which alone can safeguard national interests and reconcile

*Ibid. p. 82.

conflicting claims between province and province. It is from this point of view that we have approached our task and we are happy to be able to say that the vast majority of those of our countrymen who have thought over the matter have expressed their approval of the line adopted by us."*

This committee also recommended that—

Parliament shall, subject to and under the provisions of this Constitution, have power to make laws

- (a) For the peace, order and good government of the Commonwealth in relation to all matters not coming in the classes of subjects by this Act assigned to the legislatures of provinces.†

These powers proposed to be assigned to the Parliament of the commonwealth of India and to the provincial legislatures definitely marked the proposed constitution to be of the federal type.

As regards the attitude of the communal parties towards the proposed federal form of government for India, the Hindu Mahasabha accepted the proposals and recommendations of the Nehru Committee, *i.e.* they favoured the retention of residuary powers in the central government which, they wished, should also be responsible for peace and good government throughout the commonwealth. And as the Hindus are the largest community in India, this meant that through the instrumentality of the central government the Hindu majority could largely influence provincial governments even in the provinces with Muslim majorities. This was unacceptable to the Mus-

*Nehru Committee's Supplementary Report, pp. 11-12.

†Ibid. p. 35.

lims who, in their All India Conference held at Delhi on January 1, 1929, stated in their main resolution:

Whereas, in view of India's vast extent and its ethnological, linguistic, administrative and geographical or territorial divisions the only form of Government suitable to Indian conditions is a federal system with complete autonomy and residuary powers vested in the constituent States, the Central Government having control only of such matters of common interest as may be specifically entrusted to it by the Constitution ;

"This Conference emphatically declares that no constitution, by whomsoever proposed or devised, will be acceptable to Indian Moslems unless it conforms with the principles embodied in this resolution."*

By giving larger as well as residuary powers to the provinces they hoped to give the Muslim majority in North-West Frontier Province, Baluchistan, Sind, Punjab, and Bengal virtually full control in the governments of these provinces. And it was mainly this desire for the exercise of power in provincial administration, which dictated to them the necessity of demanding the separation of Sind from Bombay and its constitution into a province, and equal status for the N. W. F. Province and Baluchistan with the other provinces. Also for this very reason they wanted the Muslim minorities in other provinces to elect their own representatives in excess of their population

*Indian Central Committee Report, Minute of Dissent by Dr. Suhrawardy and Sir Zulfiqar Ali Khan, pp. 191-193,

proportion so as to be able to exercise sufficient check in those provinces.

Similar views were expressed by Mr. Jinnah on behalf of his section of the Muslim League in the Calcutta Convention, although he guarded his words by saying that his proposal was not based upon communal aspect. He said: "Our next proposal is that the form of the constitution should be federal with residuary powers vesting in the Provinces and clause 13-A in the Supplementary Nehru Report is most pernicious and should be deleted and the whole constitution should be revised on the basis of provincial Governments having the residuary powers vested in them..... This question is by far the most important from the constitutional point of view and the future development of India and has very little to do with the communal aspect"*. Sir Tej Bahadur Sapru, speaking upon this amendment of Mr. Jinnah, warned the members that they should take lesson from what was happening in the United States of America and Australia, where the State Governments had the residuary powers assigned to themselves, but they were now realising this mistake of their forefathers. He said, "Having regard to the peculiar position of India it would be unwise to vest these powers in the provinces. The constitution we have devised is neither federal nor unitary. It is both. As a constitutional lawyer I feel that even if Hindus are prepared to agree I would warn them on this point. 'Do not allow your mind to be misguided by the fact that in certain provinces you will have a Hindu majority and in others a Muslim

* Proceedings of the All Parties National Convention, p. 14.

majority'. Personally I feel that in spite of many suspicions you may have, you will have to pool together your energies".* Eventually Mr. Jinnah's amendment was negatived. That the Muslims are being largely influenced in this respect by communal considerations has also been made clear by Sir Zulfiqar Ali Khan and Dr. Abdulla Suhrawardy in their dissenting minute to Indian Central Committee Report.†

As regards the opinion of the Indian Princes about the federal form of constitution for India and the position of the States therein, they have definitely accepted the proposal for an Indian federation with an honourable position for the States inside it, commensurate with the provisions of their treaties, Sanads and engagements. This was made perfectly clear by the Maharajah of Patiala in his address on the topic 'Indian States and the Crown' delivered by him at the East India Association, London, on July 28th 1928. He said, "I think it is fair to say that we are all agreed that there must be something like a federation for India; and by federation I mean nothing more than a machinery which will enable British India and Indian India to meet together at the top, and to discuss jointly, in a manner consonant with the interests and importance of each, all policies and proposals which affect India as a whole."‡ All the Princes and other delegates of the States at the Round Table Conference accepted the principle of an all India federation. But the only point on which they laid emphasis

* The Proceedings of the All Parties National Convention, p. 84.

† Report of the Indian Central Committee, pp. 212-213.

‡ Indian States Register and Directory, 1929, pp. 130-31.

was that they should be treated on terms of equality with British India and not made subordinate to it, and that this consummation be brought about by a willing cooperation of the States and be not forced upon them by coercion.* The final resolution of the Round Table Conference has, however, settled the question and there is now no doubt about the practicability of establishing such a federation.

Now alongside this overwhelming desire for a federal constitution for India there has been expressed in certain quarters, mostly by important Indian personages whose opinions must command respectful consideration, the view that the future constitution of India should be of the unitary type. Sir P. S. Sivaswami Aiyer has been very strong on it as he thinks that a strong central Government has succeeded in creating a strong national sentiment and in checking the separatist tendencies likely to be produced by differences of race, religion, language and custom, so he thinks that "A federal government of the type of what prevails in the United States or in Australia is likely to encourage separatist forces and particularist tendencies and check the consolidation of the Indian Empire. The past history of the country during the British period does not reveal the existence of the conditions which justified and led to the creation of a federal government in Australia or in the United States. In those countries, there were autonomous states which were quite independent of each other, . . . The historical conditions which led to the reservation and recognition of the powers and

* Ibid. pp. 167-169,

independence of the autonomous states have been wholly wanting in the case of India, ever since it came under British rule. It would be most unwise to sacrifice the position of advantage we are now occupying and to attempt to depart from the unitary type and to create a federal government; and far more so, to create a federal government of the type of the Australian commonwealth."*

All these opinions and discussions will now be examined and a solution suggested in the next two chapters.

* 'Indian Constitutional Problems', Introduction, pp. 13-14.

CHAPTER VII

THE SOLUTION

Introductory.

Before proceeding further it is necessary to indicate the exact scope of our suggestions for the solution of the Indian constitutional problem. We do not propose to suggest a future constitution for India in all its details. Nor we are concerned with a discussion of the stages that should be passed, nor with the nature and length of the transition period as mentioned in the recent discussions at the Round Table Conference, before India becomes a fully self-governing dominion. These are matters of controversy raging for a number of years. The object of this thesis is only to make all the most important suggestions which a stable constitution for the whole of India, including the Indian States, must follow if it is to be a successful instrument. Hence all the minor details which an expert draftsman has to provide do not find a place in these suggestions. We, however, present a comprehensive view of all the chief features of the future Indian federation, in the light of interrelated experience, discussing the powers of the provincial and federal governments, and the effect of placing a particular power on one side or the other of the fence.

Similarly, with regard to the problem of the minorities we take up only those matters which

should be a permanent part of the constitution, and we do not propose any particular measures for the transition period. It is for this reason that we do not include communal representation and communal electorates in our scheme, for we believe that whatever compromises may be arrived at between the various communities for specified periods till mutual trust is restored, we firmly stick to territorial representation in the various legislatures as the ultimate solution of the problem.

1. The Form of the Constitution.

Independence versus Dominion Status.—We have already said that we are concerned with this question only in so far as it affects the problem of the Indian Federation. The broad question of Independence *versus* Dominion Status refers mainly to the external problem while the object of this thesis is to take note only of the internal problem. But between Independence and Dominion Status there is not much difference in so far as the internal administration of the country is concerned and, therefore, it cannot fundamentally affect the internal problem. Nevertheless, in any revision of the present constitution, if we accept that it must be by agreement between the various parties in the country, we must take account of the opinions of the majority of these parties, who are definitely in favour of retaining the British connection. In British India itself the Muslims, the Zamindars, the Depressed Classes, the Liberals, are all in favour of Dominion Status. And then there is the most important question of the Indian States. The States have treaties with the British Government, and these have to be guaranteed as a preliminary to the

States' joining the Indian polity. This cannot be done without maintaining connection with England. Such is the point of view of the Indian Princes. The Maharajah of Patiala, in his speech at the Basant Panchmi Darbar, in 1930, at his capital, gave a general idea of the attitude of the Princes towards the independence movement by emphasizing the fact that an independent British India, while the Indian States continue in relationship with the Crown, would be no nation, but a mere patch-work, and he declared that as an independent British India would mean inclusion of Indian States too, the States, peoples and rulers alike, are bound to oppose it with all their strength. For, he said, the sacred obligations laid on them by their treaties leave them no alternative. Their treaties and engagements bind them in honour to the British Crown and create obligations which they are determined to discharge, in their full implications. The Princes' adherence to British connection was the chief pivot of their attitude at the Round Table Conference.

Even the States' subjects, in their many conferences, have never expressed themselves in favour of independence. What they have desired for is a better system of administration in the States to be guaranteed by the Paramount Power. Undoubtedly it will be not only extremely difficult but almost impossible without a revolution of the most gigantic character to overthrow the rule of the Princes within the States, which will be a necessary preliminary to establish independence in India. To this the States *i. e.* one-third of India are definitely opposed. The Nehru Report also guarantees security of treaty

rights to the Princes but only says that the Dominion Government and not the Crown will be in direct relations with the States. It is, therefore, on the basis of Dominion Status for India, that the present suggestions for the future constitution for India shall be based. But even in case of the establishment of an independent India most of the suggestions, in so far as they are related to the application of federal principles to a solution of the Indian problem, will be found equally effective and useful.

Federal versus Unitary Constitution.—Discussions on this part of the problem reveal that but for a few isolated opinions—although some of them are expressed by eminent thinkers of India—the consensus of opinion favours the establishment of an Indian federation. No doubt, even among the advocates for a federal solution there are differences of opinion mostly with regard to the exact form of the federation, the distribution of powers between the Central and Provincial Governments, and the location of residuary powers. These differences are such as have been witnessed in the history of all federations at the federative stage. And most of these difficulties arise on account of the conflict of interests whether of communities, or of provinces or of political parties. But differences can very often be adjusted by compromises which are the real basis of federalism.

Let us examine here the case for a unitary constitution for India. The warmest exponent of this is Sir P. S. Sivaswami Aiyer who says that “as the conditions out of which federal governments have arisen do not now exist in India, it would be the height of political unwisdom

the Musalmans by establishing some kind of federation in which they can have a number of provinces with Muslim majorities. It may be argued here that in South Africa the Dutch and the English successfully united without a perfect federation. But their case was essentially different from ours as the very great excess of the blacks over the combined white population dictated to the latter the supreme necessity of a very close union, because in that union responsible government is essentially monopolised by the whites. In India, on the other hand, all Indians are and shall be equal before the law and there is no ascendancy of one race or community over the other, just as in Switzerland all races and communities have equal status and rights. And the difference in the composition of the Indian society on religious basis is also accompanied by linguistic and cultural differences, which is a case for federalism to deal with.

Again, certain provinces like Bombay are more advanced industrially than the Punjab or U. P. where agriculture is the chief occupation of the people. Even in the matter of the system of land revenue settlement there are no less than three different systems in vogue, the zamindari system with permanent settlement as in Bengal, a major part of Bihar and Orissa and a few districts of U. P.; secondly, the zamindari system with periodic settlement as in the United Provinces; and lastly, the ryotwari system as in Madras. Even at the present time there are great diversities in the matter of land administration. In the Punjab and Bundelkhand (in U. P.) Land Alienation Acts are in operation and therefore land revenue and administration have been

delegated to the provincial governments to deal with, unhindered by the Central Government. Under the present arrangements land revenue administration including assessment and collection of revenue, maintenance of land records, survey for revenue purposes, records of rights and laws regarding land tenures, relations of landlords and tenants, and collection of rents, is a provincial subject, and though it is a reserved subject and therefore liable to interference by the Central Government yet, in practice, the Government of India has not interfered with provincial legislation on this subject. And to that extent the provincial governments are not free—at least in law—to deal with the subject in the manner they consider best. Of course, when the present constitution was framed it was contemplated that as the reserved subjects become transferred central control in respect of them will correspondingly diminish and disappear. Therefore, the question is whether a system of complete responsible government in the provinces and a corresponding degree of provincial autonomy will be better in respect of the treatment of such subjects than a system of federal government. This we shall presently discuss. Indeed, the vast ethnological, cultural, linguistic and economic diversities in the various provinces coupled with the communal question will make it an extremely difficult task to establish a truly unitary form of government for the whole country.

It is true that during the British rule in India, the various parts of the country have been very closely knit together and political unity, unexampled in the pre-British rule history of India, has been achieved. But till now the system of

administration has been purely bureaucratic guided solely by the object of maintaining British rule in the country. It was, therefore, out of this supreme necessity of firmly holding India for her own benefit that England was compelled to establish unitary government. In fact, the conviction cannot be concealed that if a federal system of government had been established in India, England's task of governing such a vast sub-continent from a distance of more than six thousand miles, in her own interests and with such an ease, would have become extremely difficult, and perhaps impossible. When England brought the different parts of India under her control it was with the help of the resources of the already acquired possessions in India. If she had treated these provinces, throughout all this period from 1773 onward, as distinct political units, would it have been possible to safe-guard the North-West Frontier so easily or to maintain such a strong military force as the present army of India, without vigorous protests from the provincial governments whose incomes have been spent upon the defence so easily and without a murmur? It was, therefore, out of sheer necessity and dictated solely by diplomacy that the provinces were systematically deprived of their independent character. One Secretary of State for India sits at his table in London and writes out a dispatch to the Government of India and his instructions are at once carried out throughout the country with an amazing uniformity, regardless of the conflict of interests of the provinces. And this is possible simply because all provincial governments are alien, belonging to the same foreign country, and looking

primarily, if not wholly, to the interests of Britain. All these facilities would have vanished if the provincial governments had been allowed to retain their independent character as Madras, Bombay and Bengal enjoyed about 1773, and if these provinces were free to administer to the interests of the people under their charge. Even then we find that provincial governments, highly impressed with the necessity of safeguarding the interests of their people, have sometimes protested against certain parts of the Imperial Policy, but their protests have often been ignored. And whenever secret communications that have passed between the Government of India and the Provincial Governments on the one hand, and those between the Secretary of State and the Governor-General on the other, would be released for publication, it would afford an interesting and very valuable material to the student of constitutional history of India to show how often times provincial interests had been set aside and ruthlessly ignored with the sole purpose of maintaining uniformity of administration in the whole country. The case of the Bombay Government in regard to the educational policy has already been cited in Chapter IV. The communication of Lord Crewe, the then Secretary of State for India, gives ample clue to the policy underlying the unitary form of government in India. Another instance is the separation of the North-West Frontier Province from the Punjab and its constitution into a separate province under the control of the Government of India. This had created no little bad blood between Lord Curzon and Sir William Macworth Young, the then Lieutenant Governor of the Punjab, which had

a mild public outburst at an important gathering.

So that the establishment of the present unitary system of Government in India so highly extolled by Sir Sivaswami is a product of bureaucracy and is mostly unrelated to the establishment of a responsible government which has to look only to the interests of the governed. This has been amply demonstrated after the reformed constitution of 1919, when the provinces have uncomfortably felt the tight hold of the Government of India on provincial administration. And the introduction of partial responsibility in the provinces has increased the demand for loosening the control of the central government and increasing the authority of the provincial governments. But it may be argued here that this situation can be met by granting what has come to be termed 'provincial autonomy'. This term has come to be used with such an extreme vagueness that a very great amount of loose thinking has gathered round it. Though the authors of the Joint Report did not attempt at a clear definition of this term, they made it understood in paras 201 and 212 of the Report that provincial autonomy to be complete requires completely separate system of revenues for the provinces and also separate legislative power. They did not contemplate any legislative interference in provinces by the Government of India except (i) in cases of subjects where the Government of India was directly responsible for the administration, and (ii) where two or more provinces were concerned. They even went so far as to suggest the demarcation of powers between the central and provincial governments, but in that case they did not recommend that in

cases of interference by the Government of India, the courts should be authorised to challenge this Government's enactments. And this was the only distinction they seem to have made between federal system and provincial autonomy.

The majority of the Reforms Enquiry Committee said that in the strict sense provincial autonomy implies the existence of the provincial governments, and that the term does not imply any particular form of constitution whether in the central or provincial governments, that is to say these governments may be autocratic or democratic within their spheres. But they remarked that the witnesses before the Committee used the term in the sense that the provincial governments should be responsible to their legislatures.* The minority of the Committee also meant by this term not only division of power between the central and provincial governments but also full responsibility in the latter—but they recommended that residuary powers should reside in the Central Government in the case of India.† But Sir Frederick Whyte says that the term correctly means freedom of provincial government from external control by the Government of India and not "the internal condition of representative and responsible government".‡ Now in this labyrinth of the use of the term 'provincial autonomy', though it may not seem very difficult to give a correct meaning to it, one thing is certain that there ought to be a clear division of power between the central and

* Report of the Reforms Enquiry Committee, paras 45-48.

† Ibid. Minority Report, pp. 169-75.

‡ India A Federation ? p. 295.

provincial governments and the control of the central government over provincial governments should be considerably relaxed. And in case of India there has to be responsible government in the provinces according to the preamble to the Government of India Act, 1919. So that no one can here assert that 'provincial autonomy' is in any way akin to the powers of municipal or local government. The former is undoubtedly very much wider than the latter and no stretch of imagination can distinguish it from a mild form of federal government. And the moment this autonomy is conceded to provinces it would run to its logical conclusion, the vesting of very great powers in the provincial governments, if not in the technical words of the constitution then at least in conventions which it would be extremely difficult, if not impossible, to break without an almost revolutionary change. Of course in a federal system the rights of the provinces would be statutorily defined, while under a system of provincial autonomy they would be a matter of convention or delegation from the Government of India. The legal difference is great but the practical difference seems to be much smaller. But it does not seem probable that in the present communal and political circumstances of the country only a decentralization of powers, amounting to provincial autonomy, will find acceptance with the Muslim community who are out and out for a perfectly federal form of government. The Simon Commission Report and the Government of India despatch thereon also favour the idea of a federation.

But taking together the case of British India and the Indian States, the alternative of

establishing a unitary form of government is ruled out even by Sir Sivaswami.* And in this connection he has only described the possible alternatives of the kinds of federation suitable for India as a whole. It is true that if a unitary government is established for the whole of India, the States would lose their almost independent character which they at present enjoy in internal affairs and this will mean an obliteration of all treaties, sanads and engagements entered into between the States and the British Government of India, and the responsible Government of India will become supreme for the whole country, practically resulting in the virtual annexation of the States by British India. Such a contingency cannot possibly arise nor should it be allowed to crop up. And because the future Indian polity cannot be complete without the States inside it, we cannot look forward to the establishment of a unitary government in India.

Some of the arguments advanced against a federal constitution for India are the already existing unitary type with its manifold advantages, the existence of minorities in all provinces, and the existence of the States scattered over the whole country, which impart to the last two factors an all India and not a local importance. But these are factors which only rule out the advisability of a weak central government. And, as we shall presently discuss a strong central federal government, armed with the necessary powers, can very well look after the interests of the minorities as well as those of the States inside the Indian federation. Then there is another argument often advanced against the practicability

* Indian Constitutional Problems, p. 221.

of an Indian federation that since federalism clearly implies the idea of a 'pact' between the various parties and political units, and as this element is absent in Indian politics there can possibly be no federation in India. A little reflection will show that this is an entirely mistaken view. Till now the country—as we have already mentioned—has been governed by an alien government without reference to self-government and therefore there could be no two or more parties in the actual government of the country to arrive at a pact. Surely there could be no pact between England and India, for whatever may be the claim of the former with regard to its final authority over and responsibility for the government of India, it is the Indians themselves who have ultimately got to decide how they would shape their future government. But no sooner the prospects of responsible self-government being granted to India were brightened by the Announcement of August 20, 1917, and were further given impetus by the recent events, the field of Indian politics has been flooded with parties and pacts, based not only on communal but also on territorial grounds. Even as early as 1916 there was the Lucknow pact. Then again in the Lucknow All Parties Conference of August 1928, there was the Sind pact, the Punjab pact, and the Hindu and Muslim parties with their respective claims and programmes. In fact no future constitution for India can become stable unless the interests of the various parties, communal as well as provincial, are satisfied. However one may deplore the presence of these conflicting interests their importance in the circumstances of the country cannot be minimised by simply

Hydari on behalf of the Nizam's government.*

So that out of three hundred millions no less than 130 millions of Indians are out and out for federation. And even among the Hindus the vast majority stands for some kind of federation. Indeed, the irregular distribution of States scattered over the whole country and the existence of treaties with them preclude the possibility of a very lasting and stable unitary government for the whole of India. And all this coupled with the existence of distinct linguistic areas points to the necessity of establishing a federation in which each part may be enabled to develop along its own lines, and all combined together may make up a strong and united nation bound together by ties of common nationalism.

The Form of the Indian Federation.—With regard to the exact nature and form of federation suited to the circumstances of India we have to be guided by the experience of other federations and also we have to take stock of the conditions prevailing in the country. Looking to the various provinces of India and their relations *inter se* it is true that they are not in any sense independent of each other or of the central government of India as sovereign states. They have all through these last one hundred and fifty years of British rule been united under a common government and, therefore, the federal tie between them in future cannot follow the lines of that between the independent states of America and the Commonwealth of Australia where the centrifugal forces were much too strong at the time of federating to allow the establishment of a very

* His speech at the Round Table Conference, London, announcing the Nizam's willingness to enter the federation.

strong central federal government. Here in the case of British India the provinces have to receive powers of government from the Government of India. On the other hand, the Indian States have to lose certain powers, which they at present enjoy, into the hands of the federal government, as the States are more or less independent of the control of the Government of India in matters of internal administration. However, the task of bringing the States inside the Indian Federation is not so difficult as was the case with the states in America or Australia because even at the present time defence, foreign affairs, and the responsibility for good rule in the States are in the hands of the Government of India whose supremacy has been recognised even in the treaties between the States and the British Government. In fact, the States are more closely connected with British India—the Governments of the former being in sub-ordinate alliance with that of British India—than Austria and Hungary were in the pre-war Austro-Hungarian Confederacy.

Evidently, therefore, in the case of India the constitution makers have to take into account the two opposite forces—centripetal and centrifugal—working at present. And while the advantages of the unity already achieved in the case of the provinces of British India should not be lost, the States have to be satisfied by a guarantee of as much of the internal independence they enjoy at present as is compatible with the establishment of a federation for the whole country. This is the most important aspect of the Indian constitutional problem.

There is yet another part of the problem of

the States with regard to their position inside the federation. There are over five hundred of these States at various stages regarding size, importance and status. Their treaties, too, recognise these differences. And therefore it is neither practicable nor possible to treat them all as so many distinct units inside the federation. While the bigger States like Hyderabad, Mysore, Baroda, Kashmir, Travancore, Gwalior, Bikaner, should be admitted as distinct units, the smaller States should be grouped together for purposes of representation inside the federation. And the best plan for the smaller States would be to form confederations among themselves for certain purposes, *e. g.* higher education, High Courts etc., and these confederations should be admitted as distinct units inside the Indian federation. Surely, the Rajputana States can form one or more confederations and so can those of Central India and Kathiawar. But the extent of their internal independence has to be kept different according to the measure of the independence they already enjoy. The German Empire model so very highly recommended by the Aga Khan as suitable for Indian federation cannot be seriously considered. It was practicable only in a country where the Confederation was presided over by the outstanding personality of the Prussian King, and where the other principalities had driven bargains for their consent to join the Confederation at different periods. But where the senior partner to the Indian federation, *i. e.* British India advances towards democracy, the big and small States of the Princes who are more or less autocrats cannot comfortably be fitted inside the federation on the lines of the German

Empire. So that at the common table of the Indian federation the representatives of the Princes and their States cannot be assigned the position of ambassadors. The union, under the circumstances of the country, has to be real if the polity is meant to be lasting and strong. And here one has to agree with what Sir Tej Bahadur Sapru said at the Calcutta Convention that the Indian constitution can neither be wholly unitary nor wholly federal but a combination of the two. The exact nature must assuredly be suitable to the special circumstances already described. The vastness of the country, the communal question, and the existence of the States, all dictate the necessity of a strong central government based neither wholly on the Australian nor on the African model but on the conditions and needs of India. And therefore we cannot copy in toto any of the federal constitutions described in part I. Our problems and needs essentially differ from theirs and, therefore, while we can profit by their experience to a very considerable extent, we cannot hold any of them as a fitting model for us.

2. Redistribution and Status of Provinces or States.

That the provinces of India as at present constituted require to be rearranged and reconstituted is clear enough from whatever has been said and discussed on this subject in chapters V and VI. On what basis should this redistribution be made? This question has been amply answered by the authors of the Nehru Report. That every province should contain, as far as possible, a homogeneous population from the cultural, linguistic, religious and economic points of view

can hardly be disputed. Madras can be easily split up into three distinct linguistic areas speaking Tamil, Telugu and Kanarese. So can C. P. be split up into two, speaking Hindi and Marathi. Also the people of each should be prepared to shoulder the burden of the provincial administration. These are the two principles laid down in the Report. And while they should readily be accepted as sound and most practicable, one thing requires to be added to the financial aspect. If it is found that the people of a certain area desire to be constituted into a separate province and their demand is supported by all other considerations, the central government should not refuse it only on financial grounds if after subsidising that province for a few years in the beginning it can prosper to the extent of becoming self-supporting. And when these subsidies—reasonable they should be—are not a permanent feature, the necessity for granting them cannot be overemphasized. This might in the present case be applicable to the question of the separation of Sind from Bombay and its constitution into a separate province and North West Frontier Province. In the application of this principle we are not without precedents from foreign sources. In the United States of America the federal Government spent very large sums to reclaim and colonise the vast tracts of land lying to the west of the then territory of the states. In the Dominion of Canada too the Dominion Government readily undertook the task of developing the barren tracts to the west of their boundary, and by cutting down the forests opened immense works of public utility round about the lake Winnipeg, which now forms one of the most

important wheat producing areas in the world. The Commonwealth of Australia also has done the same with regard to Western Australia and the Northern Territory. That these initial expenditures ultimately contribute to the prosperity of the whole federation has been definitely proved by the history of these modern federations. And, therefore, the future central federal government of India must bear similar financial responsibility not only for the newly created provinces in British India but also for helping some of the States by the grant of subsidies for a number of years—of course, the subsidies are to remain only a temporary and not a permanent feature. But in this matter of redistribution of provinces the Government of the federation must be the final authority. One thing needs to be emphasized here that the territory of the States is not to be disturbed unless the Princes concerned and the provinces affected thereby clearly desire any such arrangement. This is a very necessary condition for maintaining the treaties with the Princes who are sovereign rulers as far as their internal administration is concerned.

A Committee or Commission as suggested in the Nehru Report and the Simon Commission Report and also recommended by the Round Table Conference ought to be appointed to go into the whole question of the distribution and re-arrangement of the provinces. This is necessary not only for deciding the major question of creation of new provinces but also for such minor alterations as the amalgamation of the permanently settled districts of United Provinces, *viz.* Benares, Gorakhpur, Mirzapur, Ghazipur, Ballia

important wheat producing areas in the world. The Commonwealth of Australia also has done the same with regard to Western Australia and the Northern Territory. That these initial expenditures ultimately contribute to the prosperity of the whole federation has been definitely proved by the history of these modern federations. And, therefore, the future central federal government of India must bear similar financial responsibility not only for the newly created provinces in British India but also for helping some of the States by the grant of subsidies for a number of years—of course, the subsidies are to remain only a temporary and not a permanent feature. But in this matter of redistribution of provinces the Government of the federation must be the final authority. One thing needs to be emphasized here that the territory of the States is not to be disturbed unless the Princes concerned and the provinces affected thereby clearly desire any such arrangement. This is a very necessary condition for maintaining the treaties with the Princes who are sovereign rulers as far as their internal administration is concerned.

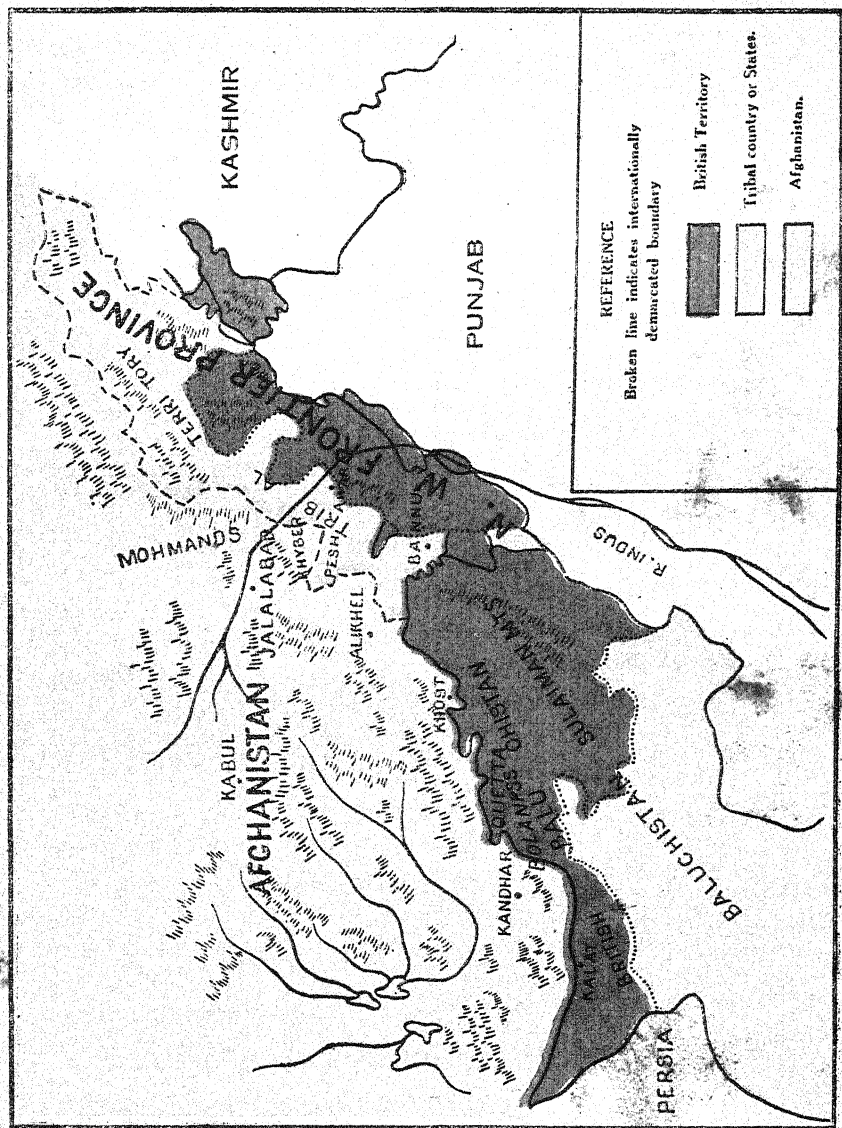
A Committee or Commission as suggested in the Nehru Report and the Simon Commission Report and also recommended by the Round Table Conference ought to be appointed to go into the whole question of the distribution and re-arrangement of the provinces. This is necessary not only for deciding the major question of creation of new provinces but also for such minor alterations as the amalgamation of the permanently settled districts of United Provinces, *viz.* Benares, Gorakhpur, Mirzapur, Ghazipur, Ballia and Azamgarh, with the province of Bihar with

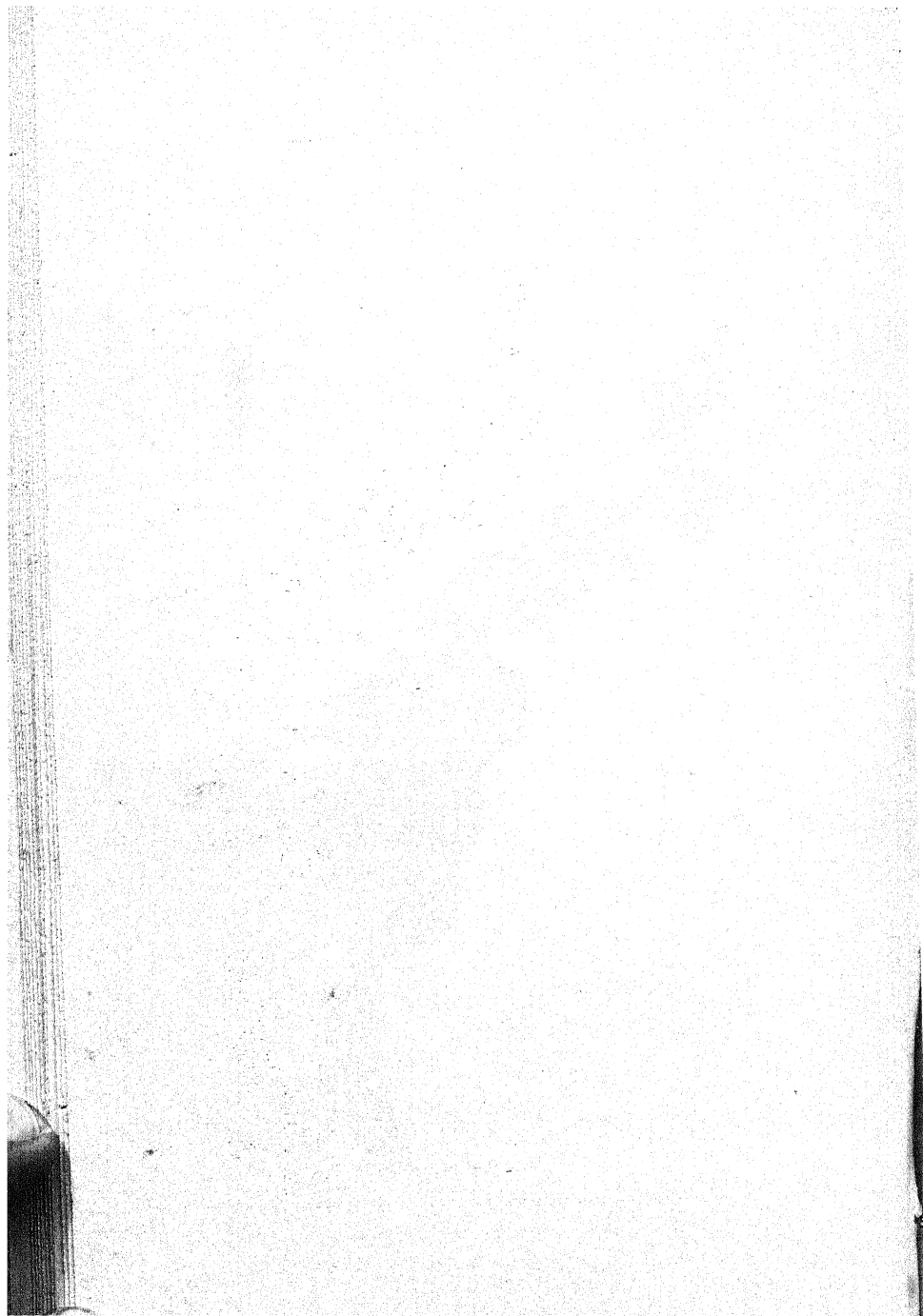
which these districts seem to have very great affinity. Such arrangements may be found to be useful and necessary from administrative as well as economic points of view. And this may be done before the constitution on federal lines is put into working. But even then it may be found necessary after actual working of the constitution to make minor alterations. To do this the constitution must authorise the Government of the federation to take up the question and settle it after consultation with the provinces concerned. That such a contingency will arise in future is more than probable. But it must constantly be kept in view that when a big or small province is homogeneous in the composition of population and there are not very great advantages in bifurcating the former or combining the latter, minor considerations should not be allowed to disturb the arrangement. Indeed, the aim should be, as far as possible, to maintain in tact the unity achieved till now and not to multiply the number of provinces unnecessarily as doing so will create new administrative difficulties.

As for the status of the various provinces *inter se* no one can possibly gainsay that they should in a federation be on an equal status enjoying equal powers. This is a very salutary principle. But in dealing with political experiments we cannot apply principles with the same exactness as in experiments in physical sciences. And even the analogies from foreign federations cannot be pushed too far, for in the case of India we have our own problems to solve.

Almost all provinces of British India can be placed on a footing of equality inside the federation with the same powers, provided they become or

are self-supporting. But there are two very important exceptions, *viz.* the North-West Frontier Province and Baluchistan. From the strategic point of view their importance cannot be minimised. They lie in the neighbourhood of a country whose history during the last three hundred years has repeatedly presented serious difficulties to successive governments of Delhi and Lahore. The North-West Frontier of India is the only vulnerable frontier of this country and the menace of invasion from that side has not become extinct even after the policies of the Sikh ruler Ranjit Singh and the British Government. The mountainous nature of the country, its general ruggedness and cold climate, the psychology of the race inhabiting it, have all conspired together to check the progress of civilising influences in that quarter. The unfriendly tribal country lying between these provinces and Afghanistan has been truly described as 'No Man's Land.' It is unthinkable that even economic development of the tribal country will at any future time humanly foreseeable enable the hardy tribes to settle down to peaceful pursuits and remove from their minds the temptations of making profitable raids into the cis-border country. And they are by no means peaceful and ordinary people to deal with. "On both sides of the frontiers all those militant peoples, to whom fighting is as the breath of life, have been flooded with weapons, many of them of a comparatively modern type. They are races liable to swarm into warfare almost without premeditation. Far more than any external menace, far more than the occasional vagaries of the Amir, the consequences of the arms traffic are





the greatest cause of apprehension upon the North-West Frontier of India to-day".* And when it is understood that the tribesmen can muster no less than three hundred thousand fighting men in the field, the seriousness of the problem of our border assumes an importance all its own. And as the danger in that quarter constantly hangs like the sword of Democles, the work of vigilantly watching the maintenance of peace on that border becomes too stupendous for the government of a province which is neither prosperous nor self-supporting. Till now the Government of India, responsible for the defence and peace of the whole country, has been able to check the fury of the tribesmen with no small cost and anxiety to itself.

Still the task has not been found to be easy. The average of murders for the last ten years in the province is 560,† a very high one for the population. Special measures entailing heavy expenditure are taken to keep the peace. During the last few years there has not been serious breaches of peace, but, as the administration report published officially indicates, "There is, however, little doubt that the ceaseless patrolling of the Frontier Constabulary was largely responsible for the peace of the Border."‡

In the administration report of the province for the year 1929, the Senior Superintendent of Police, Peshawar, remarks: "Murder has been reduced to a fine art and the normal machinery of government is powerless to deal adequately

* 'India Under Curzon and After', p. 77.

† Administration Report of the North-West Frontier Province for 1927-28, p. 4.

‡ Ibid. p. 10.

with it. Assassins can be hired anywhere in the district for a sum varying from Rs. 200 to Rs. 400, and, when a man has made arrangements for the removal of an enemy, he is at liberty to go down country on a business errand, to break some petty rules, or law, so as to be confined in the lock up, or by some other means to establish an incontestable *alibi* while the deed is done".* These are conditions absent in the other provinces of India.

Often times it has been suggested that the tribal country might be conquered and annexed to British India. But the task by its nature would not be worth undertaking. "It would plunge India into an interminable war which she cannot afford. It would stop all expenditure on internal development for years to come.....It would, moreover, tax the whole available resources of the Indian Army to bring the 300,000 fighting men of the frontier into complete subjection.....It would further involve the probability of immediate war with Afghanistan, because the Amir would assuredly regard our advance as merely the prelude to the conquest of his territories".† Since these words were written Russia has passed into the hands of a government whose designs of spreading a new form of revolution have further over-ruled the desirability of extending the north-western boundary of India.

No doubt, when India acquires the status of a fully self-governing dominion, the problem of her defence would not wholly remain an Indian concern, but would—even as at present—continue to remain an Imperial concern. Dealing with

* 'India Under Curzon and After'. p. 43.

† 'Dyarchy', Letter No. VIII, para 2, p. 399.

this aspect of the future constitutional problem of India Lionel Curtis wrote; "Here is the one critical frontier in any part of the British Dominions, and, if India were now inhabited by a people already as fitted and practised in self-government as those of England herself, it would not be possible, so long as they remain part of the British Commonwealth, to place the Indian Frontier under the control of a government responsible only to the people of India. That Frontier must remain under the sole, unfettered control of the Imperial Government charged with the conduct of foreign affairs... . The future destination of the frontier province would be signalized by removing it to the personal control of the Viceroy from the jurisdiction of the Governor-General in Council, the members of which are destined to become hereafter the ministers of a cabinet responsible to an Indian Parliament."* Though this statement is not wholly correct, particularly in so far as it relates to the complete transference of the responsibility for defence from the control of the responsible Indian cabinet, it undoubtedly correctly emphasizes the need of treating the North-West Frontier Province differently from the other provinces of India. And all this applies equally strongly to the case of Baluchistan.

The Nehru Committee relying on the principle of the right of every people to self-government, conceded the equality of status to these two provinces with the other provinces of India, but its decision seems to have been mainly guided by the desire to placate Muslim opinion on this point. At least they seem to have ignored the

* 'Dyarchy', Letter No: VIII, para 2, p. 399.

points that have been discussed here. No other committee or responsible body of statesmen except the Nehru Committee, has lent its support to granting these provinces perfect equality of status with the other more secure and internal provinces of India. Sir Zulfiqar Ali Khan and Dr. Suhrawardy, the members of the Indian Central Committee, in their Minute of Dissent, have quoted what an Afridi Chief told Sir John Simon when the Commission visited that Province. The Chief said, "You are going to give reforms to India, you must not forget us for we also want them. The fact must not be lost sight of that the peace of India depends on our attitude." And although it is very necessary that ultimately the North-West Frontier Province and Baluchistan should be granted the largest measure of self-government compatible with the safety of India, the last sentence of the Afridi Chief's warning should serve as an eye opener to the advocates of equal status to those provinces. Indeed, his warning is an argument against giving these provinces perfect equality with other provinces as it would be a strategetical blunder of the first magnitude to entrust to the people whose attitude will determine the peace of India the responsibility for maintaining the peace on the border, which will affect the peace of the whole country. For, to put that province on exactly the same footing as the other secure provinces is to concede that the part is more important than the whole. And as the peace of India depends upon how these two provinces are governed, the main responsibility for their administration without proper safeguards cannot be entrusted to a cabinet responsible to the people

who have much in common with the trans-border people who might be tempted—relying on the possibility of getting an asylum from their kinsmen on this side of the border—to try to establish their own empire in India not for the sake of beneficent rule but for the sake of plunder and loot which are the occupation of the tribal country.

There is yet another important reason why these two provinces cannot possibly be treated alike with the other provinces. And that is the financial aspect. The sources of the North-West Frontier Province are by no means sufficient to enable it to bear the burden of a completely responsible and self-governing province. The statement attached here gives the details of receipt and expenditure under different heads for four years. We take below only the totals. ”*

Years		Receipts Rs.	Expenditure Rs.	Ratio of receipts to expenditure
1924-25	...	77,23,823	2,71,09,156	1 : 3·5.
1925-26	...	78,49,115	2,84,25,237	1 : 3·6.
1926-27	...	81,15,280	2,80,58,713	1 : 3·5.
1927-28	...	87,58,160	2,93,62,035	1 : 3·4.

This statement of financial affairs definitely precludes the possibility of the province becoming self-supporting. Sir Zulfiqar and Dr. Suhrawardy have suggested that the annual sum of Rupees 18 Lakhs that used to be paid to the Afghan Government before 1919 and stopped thereafter as a consequence of the last Afghan War might be paid to this province†. Now even if this is done,

* Vide figures given in the administration Reports of North-West Frontier Province for the years 1925-26, and 1927-28, pp. 36-37, and 38-39 respectively.

† Report of the Indian Central Committee, Minute of Dissent, p. 208.

the situation will not be materially altered and the expenditure will continue to remain out of all proportion to the income. Under the single head of 'Political and Watch and Ward' the expenditure—as the table annexed here indicates—is far in excess of the total income of the whole province. No doubt it is true that this expenditure is incurred to maintain peace whereby the whole of India benefits and therefore the Government of India should also continue to supervise this department whose success or failure will have its effects on the whole country. The work of maintaining peace on this frontier which is an international frontier, is too great for a provincial government which has its own responsibilities of developing the resources of the province which is economically, financially and socially backward.

So that we conclude that for political as well as financial reasons the North-West Frontier Province cannot be given exactly the same status inside the Indian federation as the other provinces of India. And the ultimate responsibility for a part of its administration must for ever continue to vest in the Central Indian Government. This should be secured by making specific arrangements with the future government of the province and by including proper powers to the provincial Governor in his instrument of instructions.

Baluchistan too occupies the same strategical position as the North-West-Frontier Province. The following statement indicates the financial backwardness of the province and the difference between income and expenditure as illustrated in the annexed graph needs no further comment.

FIGURES FOR BRITISH BALUCHISTAN.

(Based upon the figures in the Administration Reports of the Province for the years 1921-22, 1923-24, 1925-26, 1927-28.)

Years.	Total Expendi- ture. Rs.	Expendi- ture on Police. Rs.	Expendi- ture on Political. Rs.	Total Income. Rs.
1920-21	... 63,49,782	10,10,985	31,24,221	21,35,341
1921-22	... 70,69,625	11,41,580	33,49,769	24,57,251
1922-23	... 82,78,940	11,12,248	40,26,553	22,56,926
1923-24	... 79,35,494	10,96,420	39,70,190	21,79,968
1924-25	... 83,83,471	11,15,446	40,48,578	22,20,309
1925-26	... 80,98,001	11,26,481	39,33,399	20,95,249
1926-27	... 87,74,927	11,42,545	40,81,184	22,19,344
1927-28	... 91,72,640	11,31,000	42,47,219	22,72,687

NOTE.—The figures speak for themselves. The Income in each year falls considerably short of the expenditure under the single head "Political". Again the Expenditure on "Police" alone is nearly half or more than half the income for the corresponding year.

We take below the totals of income and expenditure for eight years to show how the latter is out of all proportion to the former :—*

Years.	Receipts. Rs.	Expenditure. Rs.	Ratio of in- come to ex- penditure.
1920-21	21,13,341	63,49,782	1 : 2.9
1921-22	24,57,251	70,69,625	1 : 2.8
1922-23	22,56,926	82,78,940	1 : 3.7
1923-24	21,79,968	79,35,494	1 : 3.7
1924-25	22,20,239	83,83,471	1 : 3.8
1925-26	20,95,249	80,98,001	1 : 3.9
1926-27	22,19,344	87,74,927	1 : 4.0
1927-28	22,72,687	91,72,740	1 : 4.1

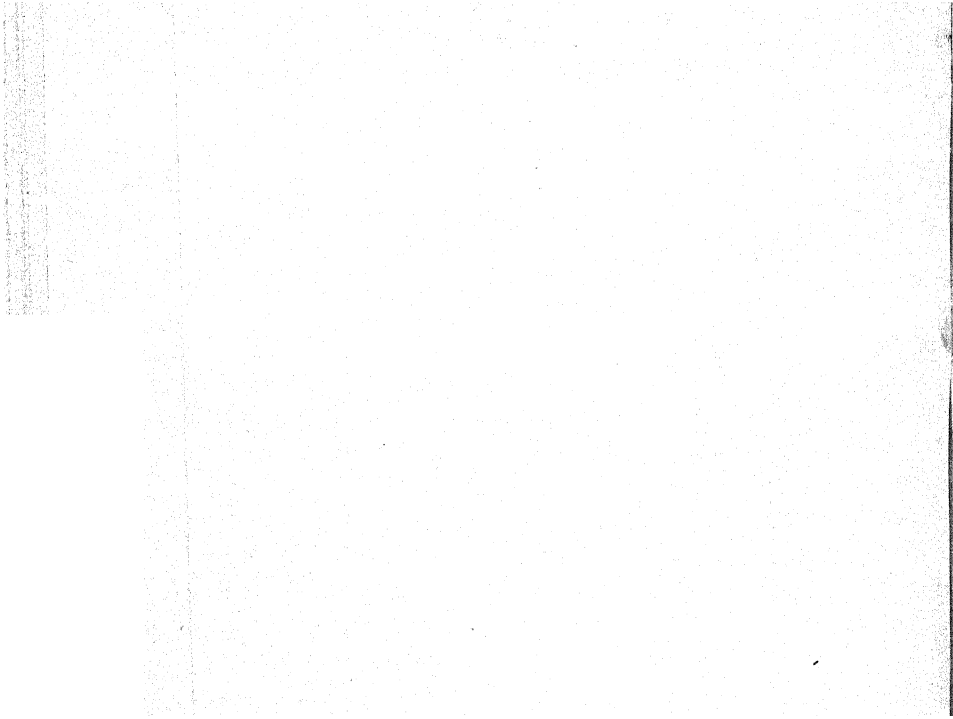
This heavy expenditure is incurred mainly on account of the fact that the province is situated in the neighbourhood of the tribal country as is

* Vide tables given in the Administration Reports of the Province for the years 1921-22, 1925-26, and 1927-28.

evident from the expenditure, as shown in the foregoing statement, under the heads Police and Political, which is much greater than the whole income of the province. Nor can its case be covered by what has been said in the earlier portion of this section regarding the grant of initial subsidies to some provinces out of the central revenues, as this province cannot develop its resources so as to equalise the income and expenditure. It must for ever continue to remain a deficit province. And all these reasons go to show that the administration of this province cannot be completely entrusted to a government responsible to the people of the province. And when it is remembered that vast sums have already been spent by the Government of India on the development of means of communications which have considerable political and strategetic importance and that its population is only 420,648, we cannot but conclude that this province should, as at present, continue to remain under the control of the central Government of India, with only such measure of freedom as is compatible with the safety of the country. It is interesting to observe here that the authors of the Montagu-Chelmsford Report expressed the same view.*

The Indian States—The position of the States *vis-a-vis* the Government of India fundamentally differs from that of the provinces of British India. The former are very much independent of the control of the Government of India in their internal affairs. They are also separate from each other. Again, their status *inter se* varies with their sizes and the conditions of treaties entered into with

* Report on Indian Constitutional Reforms, para 198.



them at different periods of history. Evidently, they are separate administrative units and this fact is of great importance in dealing with their future position inside the federation. Some of the States are very large and can easily be counted as distinct units for purposes of the federation. Out of the smaller ones, groups must be formed for representation in the central government. But in the case of all the States they shall have to lose some of their powers or independence into the hands of the central government and in return they shall have the benefit of the combination with British India, and in the matters common to both they shall have effective voice which they do not possess at present. And as only those powers shall have to be given to the central government as are absolutely necessary for the due discharge by that government of its responsibilities, and as the British Indian Provinces on account of their present position will not be given the same independent character as the States possess the position and status of the States inside the federation will be higher than that of the British Provinces. And as a preliminary to the States' joining the federation it will be necessary to guarantee the security to them of their rights under the treaties and sanads and engagements, the States will retain their monarchical character whereas the Provinces shall have democratic governments. And though strange does it appear to have a federation of democracies and monarchies it is by no means an anomaly as there is nothing wrong in the principle and the combination has every chance of a successful working. We have indicated in Part I that federalism is more compatible with democracy

than with any other form of government. Still it is not impossible or impracticable to have a federation of States where all of them are not democracies. And here we agree with Mr. Freeman who says : "A federal Commonwealth may be either aristocratic or democratic ; or some of its members may be aristocratic and others democratic ; those Aristocracies and Democracies again may exhibit either the absolute or the constitutional type of their own classes ; indeed, though federal states have commonly been republican, there is nothing theoretically absurd in the idea of a Federal Monarchy ".*

To sum up, within the Indian federation the status of the various units has to be determined by their special circumstances and we have not to be too exact in giving equality where it is harmful. The two forces which characterise the federal ties in the various federations we have described in Part I—centripetal and centrifugal—have to be combined in the case of India. And the principle of equality cannot be too rigidly enforced. Therefore, neither all the States nor all the Provinces can have the same status whether *inter se* or *vis-a-vis* the federation. Too much insistence on equality will hazard the future smooth working of the federation. In fact, it is the differences between the units in a federation that have to be reconciled and not the points of agreements.

3.4 The Distribution of Powers.

It has just been said that the status of the different Provinces and the States inside the federation will depend upon their individual

* 'History of Federal Government', Vol. I, p. 16.

circumstances. And this means that there cannot be an equal distribution of powers between the Central Indian Government on the one hand, and the several local administrations, *i. e.* Provinces and States, on the other. And therefore, the Central Government is bound in some cases to exercise varying degrees of control over the Provinces and States. This section will indicate the possible distribution of the powers and functions of government in its various aspects.

The Powers of the Central Indian Government.

The first and the foremost function of the central government in every federation is the responsibility for defence. In the case of India, even at the present time the Government of India has the sole responsibility in this matter. The only point to be considered here is the possible change in the future with regard to the States. The States at present have to keep troops—a specified number only. No doubt, some of the States keep armies as an appendage of their princely dignity. And, as has been mentioned in the preceding chapter, they bring a claim on this behalf in the income of the Government of India. Now if the Indian federation is to be a really effective institution, it is better that the States surrender their right to keep regular armies and the resulting savings in their expenditure they can devote to the development of their industries or to meeting other needs. It is true that the Swiss Cantons and the States in U. S. A. at present maintain armies and local militia. But this power was granted them on account of the distrust and apprehensions which characterised

their attitude towards the establishment of the central government, when they went into federation. We have now to profit by the experience of other federations, which clearly points to the necessity of a strong central government. In this connection the recommendation of the Indian Central Committee that as an experimental measure the Governments of Madras and Bombay should be authorised to maintain a local military force and a local militia* is really fraught with danger to the future of India. It is unlearning the lesson which the past history of India under British rule has taught. The recreating the provincial armies abolished after a long experience of the working of the Indian Army system will increase the difficulties of administration by not providing for unity of command which is extremely necessary for a successful working of the department. It might even cut at the root of the political unity by allowing the centrifugal tendencies to become stronger. It might also create an Indian Sonderbund or Civil War. The necessity of vesting the Indian Central Government with full and undivided control over the Army, Navy and Air force of India cannot be overemphasized. But if the Indian States insist, they might be allowed to retain a small and specified number of troops which should be open to inspection by the Commander-in-Chief of India and the States must carry out all orders, issued by the Army Department of India regarding their upkeep, discipline and efficiency. The States should also place all these troops at the disposal of the Central Indian Government in times of necessity.

The responsibility for foreign relations should,

* Report of the Indian Central Committee, para 116.

as at present, continue to rest with the Government of India. But in all delegations to the Imperial and International Conferences the Indian Princes should continue to send a representative of their own order and the combined delegation must function as one representing the federation as a whole and not its parts

Posts, Telegraphs, and all major Railways, must belong to the Government of India. These functions in almost all federations belong to the federal government. In the case of India those States (and they are fifteen) that maintain their own Postal System should cease to retain any in future and this should be brought about by a settlement with regard to any subsidies or the number of service stamps that may be paid to them by the Central Government to make up the the resulting loss to their revenues. Light Railways may be allowed to be kept by the States as well as by the Provinces.

Coinage, Currency and Mints, and Savings Banks should all belong to the Central Government. This is very necessary for the future economic and commercial growth of the country. In the case of some of the Indian States this is likely to tell upon their revenues, because they have their own mints and coinage, and all of them are free to have any tariff barriers or commercial laws. This may be adjusted by subsidies which should be for a limited period to enable the States to develop other sources of revenue, and should not become a permanent feature, as these functions belong to the central government in all federations and they should really be assigned to that government. Uniformity in them is extremely essential.

The following list includes the other subjects and functions of government which should also belong to the Central Indian Government:—

1. Trade and Commerce with foreign countries and all matters relating to them, including customs and tariffs.
2. Bounties on the production of export goods.
3. Public debt of the Dominion including all Dominion borrowings.
4. Bills of Exchange, cheques, hundies, and promissory notes.
5. Shipping and navigation, harbours, major ports, beacons, light-houses, and marine hospitals.
6. Such means of communications as are of all India importance or of strategic importance.
7. Emigration and Immigration.
8. Botanical, Geological and Astronomical Survey.
9. Census and Statistics.
10. Central publicity and intelligence Department.
11. Laws regarding marriage, divorce and matrimonial matters.
12. Copy-rights, Patents of Inventions and Designs and Trade-Mark.
13. Control of Arms, Ammunitions, Petroleum, Explosives and Poisons, (States to be allowed administrative freedom subject to Central Legislation).
14. Fisheries in Indian Waters beyond the three-mile limit.
15. Intra-Provincial and Intra-State matters and all territorial changes except

- affecting only one province or state.
16. Laws relating to registration of births and deaths, and marriages.
 17. Regulations of ceremonial, titles, orders, precedence, and civil uniforms (subject to administrative freedom to States).
 18. All matters relating to the Dominion Government, *e. g.* Land acquisition for the Dominion, All India services, Stores and Stationery, Audit Department, Seat of the Central Government, Parliamentary Elections, (subject to freedom to the States).
 19. Administration of all Territories not on the footing of independent provinces in internal matters, *e. g.* Baluchistan, Coorg, Ajmer-Merwar and Delhi.
 20. All powers not specifically assigned to the provinces. But States should have all powers not assigned to the Central Government.

This list is in general accordance with that given in the Nehru Report and that in the Government of India Act Devolution Rules (Part I), and is not very exhaustive. But it generally gives all those powers to the Central Government as are at present defined 'central subjects' under devolution rule 3 (Schedule I, Part I). But in the assignment of subjects in the federation we have to take into account two very important points. Firstly, though at present the provincial governments have control over all the provincial subjects as defined in Part II of Schedule I, the Government of India has great powers of interference as devolution rule 13 states that "save in the case of

transferred subjects, nothing in these rules shall derogate from the power of the superintendence, direction, and control conferred on the Governor-General in Council by the Act." This rule in fact interposes only a permeable membrane between the central and provincial governments and allows the authority of the former to percolate slowly into that of the latter to establish uniformity of not only laws but also administration. Secondly, in most of the provincial subjects the authority of the provincial governments is distinctly subject to legislation by the central legislature and this marks the unitary character of the present constitution. And although in every day administration it would be difficult and inadvisable to allow the future Central Government of the Indian federation to interfere in the provincial matters to the same extent as at present, still it is desirable to check the provincial governments from acquiring dissimilarity in their administrations. For that object in view it will be very necessary to reserve a large field of concurrent legislation (for British Provinces) to the Central Government, particularly with regard to the following subjects :—

- (i) Constitution and functions of universities including the jurisdiction of any university which might include more than one province.
- (ii) Legislation regarding animal diseases.
- (iii) Forest Laws (only such as are necessary for uniform working and this for checking monopolies in certain provinces at the risk of others' profits).
- (iv) Civil and Criminal Laws and the constitution and powers of Civil and

Criminal Courts. (provinces to have concurrent powers but the ultimate responsibility to be with central government).

- (v) Registration of deeds and documents,
- (vi) Welfare of labour including industrial insurance, housing, hours of work, and provident funds, factories, electricity, boilers, and settlement of labour disputes.
- (vii) Legislation regarding newspapers, books, and printing presses.
- (viii) Criminal tribes, prisons, and prisoners.
- (ix) Qualifications and standards of medical and other professions.
- (x) The position and status of minorities.

In the above powers for concurrent legislation we have mentioned criminal and civil law. The legal sub-committee of the Federal Structure Sub-Committee of the Round Table Conference in London, was appointed to consider the 'possibility of giving the provincial legislature a plenary power of legislation over the whole field of civil and criminal law and giving the Central Legislature power to legislate on those matters only which are necessarily the concern of the Central authority.' The Legal Sub-Committee realising the necessity and the desirability of uniformity in Civil and Criminal Law wisely reported that the central legislature should have a wide power of legislation. It, however, favoured giving the provincial legislatures concurrent powers of legislation with the central legislature, but in case of conflict the latter's view should

prevail.* This is undoubtedly a very wise recommendation and must be embodied in the federal constitution ; uniformity in these matters is very desirable for such a vast sub-continent. Even some of the Indian States at present have adopted the criminal and civil codes of British India and though no compulsion can be brought to bear on the States in this regard it is more than probable that they would introduce British Indian civil and criminal codes in their territories on seeing the advantages of uniformity. If, however, the central legislature is divested of its present authority to legislate on these matters, even the present uniformity would disappear and this would result in great inconveniences. We, therefore, unreservedly favour the Legal Sub-Committee's recommendation.

Similarly, the importance of reserving to the central legislature wide powers of legislation regarding labour can hardly be over-emphasized. The question of labour is assuming an international aspect and the League of Nations through the International Labour Conferences and in other ways is trying to establish uniformity in this matter which concerns the welfare and an honourable existence of a large part of the human race. India, being an original member of the League, sends its delegation composed of representatives of the employees, of the capitalists and of the Government to the International Labour Conferences. In future, too, this shall have to be continued if India means to move with the world and to have an interest in international matters. Even the States cannot object

* Report of the Legal Sub-Committee. Proceedings of the Indian Round Table Conference. Cmd. 3778, p. 235.

to federal legislation on the question of labour, on the ground of their internal sovereignty. We, therefore, propose that federal legislation regarding labour should be binding on the component parts of the Indian federation. Administration of these laws, as well as minor local legislation not in conflict with the central legislation, should, of course, be a provincial or state concern. Second to agriculture the problem of industry, *i.e.* capital versus labour, is an important matter in India and its development in the future is a foregone conclusion. Uniformity is, therefore, essential. The labour movement in the world is assuming large proportions and its repercussions are already being felt in India. The central government is, therefore, the only government to cope with this problem.

These concurrent powers are undoubtedly large but they are very necessary to keep uniformity in such a vast country. In doing this we must profit by what the Germans had done in drawing up their new federal constitution in which clauses 7-11 give the federal legislature large concurrent legislative powers. And in so far as British Provinces are concerned the concurrent powers as enumerated above may easily be continued to vest in the central government. Even the States would find it profitable to adopt most of the central laws on such subjects, but they should not be compelled to do so. The central government shall be ultimately responsible for peace and good government in the country. But its interference in the States should be subject to consultation with a committee appointed by the Chamber of Princes for this purpose.

We may enunciate here three principles which should be kept in view regarding the assigning of powers, (i) the Central Indian Government must be a very strong government and should, therefore, have special powers of laying down general principles of legislation for the provincial governments even in matters that belong to the latter, although there should be no such administrative restriction over the Provinces in those matters, (ii) in matters solely assigned to the Central Government, its authority over the citizens whether in the provinces or the States must be exercised irrespective of the Provincial or State governments, and (iii) the residuary or unenumerated powers should, of right, belong to the Central Government in regard to the Provinces (but the States are to have these residuary powers) unless the Central Government itself allows exercise of any of them to the Provincial Governments, but the ultimate authority should, in the case of Provinces, always reside in the Central Government.

The actual working of federal constitutions has compelled the exponents of State rights to submit to the strengthening of the central government. In Canada the constitution of 1867 definitely assigns these powers to the Dominion Government. In U. S. A. although the constitution assigned unenumerated powers to the States, the subsequent amendments and the judicial interpretations of certain clauses by the Supreme Court, particularly by Chief Justice Marshall, have considerably increased the powers of the Congress much to the discomfiture of the States but certainly for the good of the Republic. In Australia the advent of the Labour Party has

definitely resulted in the strengthening of the Commonwealth Government; while in South Africa the constitution itself strictly delimits the authority of the provincial governments. In Republican Germany, while concurrent powers are given to the State and Federal governments, federal law overrides state law whenever the two are in conflict. Unfortunately, the Nehru Committee took a very narrow view of this extremely important part of the constitutional problem and made a too bold assertion in saying: "We have not provided for concurrent powers in any subject of both the central and provincial legislatures. This is likely to lead to friction, and so we have endeavoured to place the functions of the two in entirely separate compartments with no overlapping,"* But what about unforeseen circumstances that might arise later on? And is it really true that even in this division of functions there will never arise any controversy over any of the future problems? Is it humanly possible to divide the functions of government in such water-tight compartments and avoid all future litigation which is often seen in other federations? In fact, the Committee failed to profit by the experience of modern federations. It is, therefore, necessary, while generally giving the provinces and the central government concurrent powers in all unenumerated subjects, to clearly lay down that the ultimate responsibility for the exercise of these powers must rest with the central government in so far as the provinces of British India are concerned. And there need be no difficulty about this as we are evolving a constitution in which the present all-powerful government

* Nehru Report, pp. 25-26.

of British India is parting with some of its powers to the provinces. Similarly, in the case of the States, the States themselves are parting with some of their powers to the federal government and they should retain the powers not so assigned to the federation. This last provision is extremely important to maintain and safeguard the peculiar constitutional status of the States inside the federation, and we should not in their case be led away by political prejudices against the Princes.

CHAPTER VIII

THE SOLUTION (*continued*)

The Federal Legislature.—The problem of an upper house in a federation has been discussed in Chapter III. It is here necessary to point out that the federal legislature in India might well be unicameral. The working of the Council of State has not at all been in consonance with the public view. To ensure check of hasty legislation it is sufficient to provide for the institution of special committees to deal with religious, and social, labour and commercial, as well as general legislation. When a measure to be enacted into law has been thoroughly discussed and reported upon by the committee of the legislature concerned, there will be very little likelihood of an undesirable legislation being made. We need not apologise for quoting here the words of Mr. J. A. R. Marriot. He says, "The necessity of a counterpoise to democratic fervour; the safety which lies in 'sober second thoughts'; the advisability of a check on hasty and ill-considered legislation; the value of an appeal from Philip drunk to Philip sober; the liability of a single chamber to gusts of passion and autocratic self-regard—all these familiar arguments, and many like them, may be as sound as on the day when they were first employed, but somehow the salt

has lost its savour."* The new constitutions of Yugoslavia, Estonia, Latvia, Lithuania, Finland and Serbia have no second chambers. In federations, however, the Upper Houses were instituted primarily for the purpose of giving equal representations to the component states whereby they could safeguard their state interests inside the federal government and it was even made one of the primary conditions precedent to the formation of the unions. In almost all of them their actual working has belied the hopes of the advocates of the state-rights. In Australia the advent of the labour party has converted the Senate into a field for party strife, which has "converted this body into the enemy rather than the protector of state-rights that it was created to guard."† In U. S. A. the direct election of the Senators has not changed the character of the repository of state-rights.

But apart from the failure of federal upper houses in general, India has her peculiar problem. The very large number of States will preclude the possibility of granting equal representation to every one of them and to each of the British Indian Provinces. Nay, even all States will fail to be represented in the Lower House itself. The Round Table Conference in London accepted the principle

* 'Second Chambers,' Introduction, pp. 4-5.

The party system, the press, and the almost monopoly of legislation lying in the hands of the Executive in all parliamentary constitutions rules out the danger of the upper house misrepresenting the opinions of the electorate and hence there is no justification for a second chamber on that score.

H. B. Smith, 'Second Chambers in Theory and Practice,' p. 44.

† 'Round Table,' September 1919.

THE SOLUTION

of a bi-cameral federal legislature for India. Even if the future federal legislature be made bi-cameral the difficulties of finding a suitable basis of representation will be very great. In actual practice, however, the upper house, if and when established, will be found to be worse than useless. The end in view will be achieved by keeping the federal legislature unicameral and by making provision, whether statutorily or by convention, preferably the latter, to institute committees for dealing with all legislative measures before these are actually placed before the federal parliament for enactment. In these committees British India and the States may be given 60 per cent and 40 per cent representation respectively, and to ensure communal harmony, provision may be made for representing the minority communities. These committees are sure to exercise considerable influence on the policy of the cabinet and they would better check hasty legislation than an upper house whose adverse vote would very often create resentment in the lower house. Again, it may be left to the cabinet to decide whether it would resign on an adverse vote on a particular measure considering it to be a vital issue, or that it would continue in office and abide by the verdict of the house. The recent experiences of the British Parliament where the Labour Party had on more than one occasion modified its policy in keeping with the majority view, are a great lesson to us.

The Indian Parliament might, therefore, well be unicameral. The area of the Indian States is $\frac{1}{3}$ and population $\frac{1}{4}$ of the total figures for India. The representation of the States inside the federal legislature should be more than 25 per cent

but less than 33 per cent; it may be about 28 per cent of the total strength, the remaining 72 per cent should be from the provinces.

The strength of the Parliament should be sufficiently large to enable the smaller provinces and the Indian States to get effective representation. The number of the Indian States is so large and they are so varied in size, population and importance that it is difficult, nay impossible, to represent all of them in the federal legislature. Of the States, 454 have an area less than 1000 square miles each, 452 have a population less than 1,000,000 each; 374 have a revenue less than rupees one lakh each. Only 30 have area, population and resources of an average British Indian district. Fifteen States have an area less than one sq. mile each, three have less than 100 souls; and five have a revenue of Rs. 100 each. The smallest revenue is Rs. 20 for the year and the smallest population is 32 souls.* The Round Table Conference has recommended 250 members for the lower chamber of the federal legislature.† This is too small a number and the arguments for a larger number are, indeed, very great. The importance to be attached to the question of efficiency of working with a legislature of a large size has its limitations, particularly when it is remembered that in India we are well on the way to form organised political parties when the increase in the number of legislators, while securing adequate representation of the population, will not in reality obstruct smooth and efficient working. If the recommendation of the Federal

* 'The Indian States and British India', p. 77.

† Report of the Federal Structure Sub-Committee, Cmd. 3778, para 30.

Structure Sub-Committee is accepted then the representation of the Indian States, allowing them a little weightage as we propose, and assigning to them 28 per cent of the total strength of the House, will come to 70 only. This will be too small a number to enable even some of the most important States to get any representation at all.

We, therefore, propose that the strength of the Parliament should not be less than 500 members. We would prefer even a larger number but for the sake of illustration and calculation we start with the lowest figure. This is, however, but an arbitrary figure and if any departure is made, the figures given here in the following two tables will be correspondingly changed. The Indian States should get 28 per cent of the total strength, *i. e.* 140 members, and the remaining 360 members should be assigned to the various provinces of British India. The present writer suggests the following scale and method of representation. In preparing the table for British India regard has been paid to population basis for the provinces, departing from this only to secure at least one representative to minor or less populated administrations of Baluchistan, Ajmer-Merwar, Coorg and Delhi, and to give special representation to chambers of commerce, and European and other interests. As for the Indian States, the more important of them like Hyderabad, Mysore, Baroda, Kashmir and Gwalior, or the isolated ones like Sikkim and Manipur, should be allowed to join the federation and represented in the federal legislature singly. While for other States, groups of them should be formed like small confederacies and each such group should be

population basis, and a part to give them weightage or to make the representation an integer. But out of the 140 seats as proposed for the States' representation only 112 have been allotted for direct representation of the States or their groups. The remaining 28 seats have been given to the Chamber of Princes, who might fill them up by means of election among themselves on such basis as may be agreed upon. This is necessary to interest the Chamber in the Federal Legislature, to introduce a conservative element in the Parliament, and to maintain a harmonious working of the Federal Legislature and the Chamber. This will secure the Princes a direct voice in federal legislation even when in the future all the States decide voluntarily to throw open their 112 seats to be filled up by means of democratic election by the States' subjects.

We have included Burma inside the federation as there has not been so far a unanimous demand for separation on behalf of the people of Burma themselves. Opinion among them is divided and it is difficult, at present, to say which way the majority is inclined.

Table illustrating the representation of British Indian Provinces inside the Federal Parliament.

Province.	Popula- tion.	Representa- tion on popula- tion.	Weight- age.	Special interests.
Madras ...	42,318,985	59	...	one European.
Bombay ...	19,348,219	27	...	2 Chamber of Commerce and 1 European.
Bengal ...	46,695,526	65	...	2 Chamber of Commerce and 3 Europeans.

Province.	Popula- tion.	Represen- tation on popula- tion.	Weigh- tage.	Special interests.
United Provinces } ...	45,375,787	63	...	1 Commerce & 1 European.
Punjab ...	20,685,024	28	...	2 Sikhs.
Burma ...	13,169,099	17	...	1 Indian and 1 European.
Bihar & Orissa.	34,002,189	48	...	...
C. P. & Berar...	19,912,760	17	...	...
Assam ...	7,606,230	12	...	1 Commerce 1 European.
N. W. F. P. ...	2,251,340	3	...	...
Baluchistan ...	420,648	5	5	...
Ajmer-Merwar.	465,271	55	5	...
Coorg ...	163,838	2	8	...
Delhi ...	488,188	55	35	...
Total (360 seats in all)		341	2	17

Table showing the representation of States.

State or Group.	Population.	Popula- tion seats.	Weightage seats.
Manipur (Assam) ...	394,016	4	6
Baluchistan. ...	378,977	4	6
Baroda ...	2,126,922	3	1
Bengal ...	896,926	1	1
Bihar and Orissa	3,959,669	5	1
Bombay ...	7,409,429	10.2	1.8
Central India ...	5,997,023	8	1
Central Provinces ...	2,066,900	3	1
Gwalior ...	3,186,075	4.6	4
Hyderabad ...	12,471,770	18	2
Kashmere ...	3,320,518	5	nil.
Madras ...	5,460,312	8	1
Mysore ...	5,978,892	8	1
N. W. F. P. ...	54,470	nil.	1
Punjab ...	4,416,036	6.6	1
Rajputana ...	9,844,384	13.8	1.2
Sikkim ...	81,721	nil.	1
United Provinces ...	1,134,881	1.5	.5
Chamber of Princes (whether from amongst them- selves or their ministers) ...	...	...	28
Total ... (140 in all)		95.5	46.5
Grand Total 500.			

In the table for British India, as given above, the representation of U. P. in the federal Parliament comes to 63. This gives us for an average size of each constituency 1687 sq. miles or 704,077 souls per member. The sizes will, however, vary in actual practice due to differences in the density of population. We do not think that in view of the past experience of the elections to the Legislative Assembly, the voters will show lack of interest in exercising their franchise. In the first three elections held in 1920, 1923 and 1926, the percentage of votes cast was 20.1, 41.9 and 48.07 respectively.* The low figure for the first election of 1920 was due to the boycott of legislatures preached by the Congress, while in the other two elections, Swaraj party carried on intensive propaganda in favour of its candidates. This clearly shows that the enfranchised public took interest in these direct elections and in future they are bound to show greater interest when their representatives will have real power in the legislatures. The franchise as well as the method of election of the representatives from the provinces should be definitely provided for in the constitution itself, while with regard to the States the whole question excepting the number of representatives from the States should be left to the Chamber of Princes whose decisions in that regard are bound to be more satisfactory to the States than any made by the central government. This provision is necessary to enlist the support of the States and to enable them to retain manarchical or democratic governments as the Princes and their governments might choose to

* For further election figures, my 'Indian Constitutional Problem', pp. 86-87.

do. This is undoubtedly a departure from the methods prevailing in other federations, but it is necessary in the special circumstances of India. So that should a Prince and his government choose to nominate a certain proportion of their representatives they might do so, reserving a fixed proportion to be elected by the States' subjects according to the franchise laid down by the State Governments. The likelihood is that as circumstances change, the number of enlightened Princes will increase and they will realise the value of appertaining to themselves the position only of hereditary and constitutional heads of their governments. But the central government should not force any such measure.

In the case of British India the members of Parliament should be elected directly by the electors of the various provinces without any communal electorates. The Simon Commission has, however, suggested indirect election to the Federal Assembly and they have recommended election by the Provincial Councils (Paras 135, and 137, Vol: II). They also say that the federal legislature should be bi-cameral, *i. e.* they desire the continuance of the Council of State which, according to them, should be elected by the upper houses of Provincial Legislatures if such houses are established, or by the unicameral provincial legislatures in the same way as they would elect members to the Federal Assembly. This whole scheme is undemocratic, most conservative and sure to break down because of the elections, earlier dissolutions and re-elections, of the various federal and provincial legislatures at different times. The Government of India, though admitting the practical advantages

of indirect election, say: "Our own view is that on principle the arguments in favour of direct election as the ultimate system for a Federal Assembly are the stronger". (Para 125 of the Despatch). We have here provided for a method of States' representation in the Federal Parliament, which is in some respects different from that recommended for the representation of the Provinces of British India. This is surely a departure from the normal practice in other federations, but our proposals provide for future modifications in the method of election of the States' representatives so as to come on a par with the method in British Provinces. The departure is necessary for an important reason, viz. to satisfy the Princes and earn their willing co-operation. With regard to the general question of method of election to the Federal Parliament we entirely agree with the Government of India who say, "it does not appear to us to be necessary that the method of representation of the States and the Provinces of British India must be uniform. We should therefore hesitate to put the federal argument of the Commission too high". (Para 126 of the Despatch).

The normal life of the Parliament should be five years. It may, however, be dissolved earlier by the Governor-General when his cabinet strongly recommends this step to enable it to know the verdict of the country on a cabinet measure which the Parliament fails to pass. With the separation of Sind and its constitution into a separate province as well as the provision for the election of representatives of the Punjab and Bengal, the number of Muslim members will be quite sufficient to enable that community to

have a very effective and influential voice in the Indian Parliament. But the members to be assigned to each province need not be strictly in proportion to the population, the smaller and less populated should be allowed a weightage representation.

The Question of the Upper Chamber.—We have advocated above the case for the establishment of a unicameral federal legislature in India. It is based upon the failure of upper houses in other federal legislatures. We have also provided measures for checking hasty and ill-considered legislation from being passed and we hope that such a federal legislature would work satisfactorily. In the recent discussions, however, the advocates of an upper chamber in the Indian federal legislature are strong. And, therefore, the chances of unicameral legislature scheme being accepted seem at present to be remote, particularly as the Princes desire equality of representation in that chamber, whereby they might exercise an effective voice in all legislation and prevent a measure prejudicial to the States from being passed. The minorities, too, wish that the establishment of an upper house would safeguard their rights, by introducing a conservative element in the federal legislature. All this desire for an upper chamber is due to mistrust in the minds of the federating parties, and it reminds us of the discussions that took place in other federations, particularly in Canada and Australia. In these circumstances we propose that, in case the Indian federal legislature has to be bi-cameral, the lower house should be constituted as suggested above while the upper house should have 150 members out of which the Indian States should

be given 75 members. The demand of the Princes for equality in this respect should be conceded. In U. S. A., 48 senators are elected by 24 states with a total population of $16\frac{1}{2}$ millions, and the remaining 48 Senators are elected by another group of 24 states with a population of 75 millions. Again, Nevada with a population of 81,875 souls elects the same number of Senators, i.e. 2, as New York with a population of 9,133,614 souls.* In Switzerland the Canton of Urban Basel with an area of 14 sq. miles enjoys equal representation in the upper house with Graubunden whose area is 2773 sq. miles.† Hence the objections against equal representation to the States in the upper chamber in India should not be allowed to stand.

As for the powers of the upper house it should have co-equal powers of legislation with the lower house, but all money bills should originate in the latter. When a measure has been passed by both houses, it should be enacted into law. In case of deadlock joint sessions and a bare majority of votes should decide the issue.

The representatives of British India should be elected by provincial legislatures, the number of members to be assigned to each province depending upon the size and importance of the province. The representatives of the States should be chosen by them in the manner decided upon by the Chamber of Princes. The life of the upper house should be six years, one half retiring every 3 years. The qualifications for membership of the house should be sufficiently high to

*T. H. Reed, 'Form and Functions of American Government,' p. 256.

†R. C. Brooks, 'Government and Politics of Switzerland,' p. 312.

ensure the return of responsible persons. These suggestions will introduce the necessary conservative element in the legislature, will give the States equality of status and an effective voice in federal legislation, and will protect the interests of the minorities.

With regard to the authority of the Indian Parliament, it should be of a triple nature, viz.

- (i) In matters affecting those subjects which are assigned to the provinces but for which uniformity of legislation is desirable, Indian Parliament's legislative powers should be of a general character outlining general principles and leaving the provinces (and in certain cases the States but without any compulsion on them) to work out details for themselves.
- (ii) In matters affecting residuary powers Indian Parliamentary legislation will supersede all provincial legislation when the latter happens to be in conflict with the former. The States shall be fully independent in all residuary powers, subject only to the decisions of the Chamber of Princes.
- (iii) In matters affecting the subjects assigned to the Central Government the Indian Parliament shall have the sole and unfettered right of legislation.

The Federal Executive.—The executive power should reside in the King acting in his capacity as the constitutional head of the Government of India. It should normally be exercised by the Governor-General who shall represent the King,

and whose present title of 'Viceroy' should be abolished. He shall appoint the members of his cabinet on the recommendation of the Prime Minister who shall be the leader of the majority or the largest party in the Parliament. The Muslim demand that a certain proportion of the ministers should be Musalmans should not be guaranteed by the Constitution. But a sort of convention should be established whereby the minorities may be represented on the cabinet. In this respect the examples of the Dominion of Canada and Switzerland will serve to allay Muslim fears.

As for the inclusion of the Indian States in the cabinet, at least one fourth of the total number of ministers should be appointed from amongst the representatives of the States. It is very necessary to make this provision as it will secure the position of the States inside the federation and will considerably remove the mistrust that remains and is bound to remain in the minds of the Princes with regard to their future relations with the representatives from British India. Such a provision will not be a novelty in the Indian constitution. In other federal constitutions we find similar provisions, whether statutory or by convention. In Switzerland we find that not more than one member of Federal the Council (the executive) can be elected from the same Canton. There is a further legal restriction regarding the election of federal councillors: "Persons related by blood or marriage without limit in the direct line and up to and including the fourth degree in the collateral line, husbands who have married sisters, and also persons connected by adoption, may not at the

same time be members of the federal councils.. .. whoever enters by marriage into any such relationship thereby gives up his office.”* It has also become a tradition that the two largest cantons, viz. Zurich and Bern, are entitled to representation in the Federal Council. In the distribution of the remaining seats the claims of smaller cantons are satisfied, and the cantons where the Italian or French language predominates get a member or two. Though the Canadian or Australian constitution does not contain any such provision, there too the selection of all the ministers from the same province or state would be considered improper, and such a ministry—though there would be no theoretical objection to its composition—would soon become unpopular. These restrictions regarding the selection of ministries in federations arise from the mistrust that exists amongst the component units of the federation, some of which feel afraid of their individual existence in case they happen to possess no hand in the executive itself. In the case of British India and the Indian States this mistrust has become very great as British India, the senior partner in the firm, will be for all practical purposes a democracy, while the States will have their monarchical character. So that if the claims of the Indian States to an effective representation in the federal executive are not guaranteed by the constitution the States would remain in constant dread of being practically annexed by British India.

The executive would, of course, be responsible

* Bundesgesetz über die Organisation der Bundesverwaltung of March 26, 1914 ; A. S. XXX, 292. Quoted in Brooks, Government and Politics of Switzerland, pp. 104 105.

to the federal Parliament, to the lower house if the Parliament is bicameral. We have, however, to see what this responsibility should mean. The Parliament as proposed above, would contain 72 per cent representatives from British Indian provinces and if it is provided that the ministry would go out of office by a simple majority voting a no-confidence motion against it, there would hardly be any room left for the Indian States to exercise adequate and effective voice in this branch of the federal government. Nor would the minority communities feel safe under this arrangement. Moreover, a simple majority rule works satisfactorily only when there are two well-defined parties in the legislature. Here in India the case is quite a different one. We have not two well-defined political parties to work the parliamentary system of government by a simple majority rule. Then there is so much distrust between democratic British India and monarchical States. There is also the third element of the minorities. Fourthly, we have to make our constitution a very stable and secure instrument of government, which should withstand the momentary impulses of the legislators. Fifthly, there is the need for providing checks and counter-checks on account of our not proposing communal electorates.

Taking all these facts into consideration we propose that a vote of no-confidence should not be allowed to be moved until it is submitted with the signatures of at least 100 members, *i.e.* 20 per cent of the total number of members of the popular house, and it should also mention specifically reasons for vote of no-confidence. And when it is put to vote it should be considered carried only

when 60 per cent of the members present vote for it.

These checks would make the ministry secure and stable. Articles 75 and 76 of the Czechoslovakian constitution provide that before a motion of no-confidence is moved it should be supported by at least 100 members of the Chamber of Deputies, *i.e.* $\frac{1}{3}$ of the total strength, and then it should be referred to a committee for report thereon within a period not exceeding eight days. And there should be an absolute majority in favour of the motion, voting being taken by roll-call, to drive the cabinet out of office. This special provision has made the constitution most successful and stable of the post-war European constitutions and Prof. M. W. Graham considers it "the highest development of constitutional parliamentary republicanism".*

It may be argued here that our proposals would be undemocratic and might result in the rule by minority. To this our reply is that since the advent of the Labour Party in England, we have been witnessing rule by a minority party. In the first labour government of Mr. MacDonald, the labour party was only the second largest party in the Parliament; and though it was the largest party, it depended, to a considerable extent, for its existence on the support or at least the neutrality of the least numerous of the three parties, *viz.* the Liberals. We cannot, however, say that the labour government was undemocratic or that it flouted the opinions of the Parliament. Again, on the continent we see France with its multi-party system and very quick changes in ministry. There are often kaleidoscopic changes

* 'New Governments of Central Europe', p. 312.

in the personnel of the successive ministries, a new ministry containing a large proportion of the members of the out-going ministry. And lastly, we should not sacrifice security, stability and successful working of the constitution for the sake of merely adhering to a theory. We have to take stock of the special conditions of the Indian federation and of the various interests and parties inside it.

The Federal Judiciary.—There should be a Supreme Court for India which should have the following powers:—

- (1) It should have original jurisdiction in all matters affecting the central subjects.
- (2) It should be the final court of appeal for all the States and Provinces in matters relating to the central subjects.
- (3) It should interpret the constitution, and it should pronounce upon the validity or otherwise of an Act of a provincial or central legislature only when it is called upon to do so.
- (4) It should decide all disputes arising between the various provinces or States,—the present method of final decision by the executive of the Government of India in such cases is neither in keeping with the spirit of federalism nor does it inspire confidence in the parties concerned, and also it is always better to leave these matters to be decided by the judiciary, subject to the following conditions:—
 - (a) In all disputes respecting two or more provinces of British India its decision shall be final.

- (b) In disputes in which one or both parties are the State or States, appeals from its decision may be preferred in the Judicial Committee of His Majesty's Privy Council. (This will ensure greater security of treaty rights to the Princes than they at present enjoy).
- (5) Its general rulings shall be binding upon the Provincial High Courts of (British) India. And it should be the final court of appeal for British Provinces, in all matters.
- (6) It will tender advice to the Governor-General in such matters as are not assigned by the Princes to the federation but are reserved by them for direct relations with the King, and which, we advocate, should be administered by the Governor-General in the name of the Crown with the advice and consent of a standing committee of the Chamber of Princes.

With regard to such matters affecting the Indian States as succession or adoption, the Chamber of Princes should be allowed to appoint a committee to deal with such cases and the Governor-General shall issue his final orders in the name of the Crown, but with the consent of this committee; wherever necessary these matters might be referred to the Supreme Court for its advice, but its recommendation need not be binding upon the Governor-General acting in consultation with the committee of the Chamber of Princes. This method will undoubtedly satisfy the Princes. The present method of almost arbitrary

decisions by the Government of India is neither liked by the Princes, being repugnant to their treaties and status, nor can its continuance be in keeping with the new status of the States inside the federation.

In Canada the Supreme Court has similar powers. The decisions of the Supreme Court are final and no appeal can lie to any court established by the British Parliament. Section 47 of the Dominion Statute, 38. Vic. C. 2., lays down: "The judgment of the supreme court shall in all cases be final and conclusive, and no appeal shall be brought from any judgment or order of the supreme court to any court of appeal established by the Parliament of Great Britain and Ireland by which appeals or petitions to Her Majesty in Council may be ordered to be heard; saving any right which Her Majesty may be graciously pleased to exercise by virtue of her Royal prerogative".*

Section 74 of the Commonwealth of Australia Act defines the status of the Australian High Court thus:—"No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the constitutional power of the Commonwealth and those of any State or States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

"The High Court may so certify if satisfied that for any special reasons the certificate should be granted and thereupon an appeal shall lie to

* Dominion statute, 38, Vic. C, 47. Quick & Garran, 'Annotated Constitution of the Australian Commonwealth', p. 748.

Her Majesty in Council on the question without further leave.

"Except as provided in this section, this constitution shall not impair any right which the Queen may be pleased to exercise by virtue of her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitations shall be reserved by the Governor-General for Her Majesty's pleasure".*

Though the right of appeal from the decisions of the Dominion Supreme Court to His Majesty's Privy Council is limited both in Canada and Australia, it, however, exists there and is exercisable in certain cases. It is this right which helps in maintaining uniformity in the judicial systems of the various members of the British Commonwealth.†

We, therefore, propose that the right of the King to grant special grace to any of his subjects in British India to appeal to His Majesty in Privy Council should be continued.

We, however, do not recommend that it should be obligatory on the Indian States joining the federation to allow appeals from their highest courts to the Supreme Court or to the Privy Council in cases which are confined to the people of the States only. But wherever one of the parties is a state and the other is a citizen of British India, the highest court of appeal should

* Quick & Garran. 'Annotated Constitution of the Australian Commonwealth', p. 748.

† Riddell. 'The Canadian Constitution in Form and in Fact', p. 54. Also footnote 9 to Chapter 4 on Judicature.

be the Supreme Court. That is to say, in strictly internal cases of a State the State judicature will continue to remain the highest tribunal and this will keep the internal sovereignty of the States unimpaired.

The Powers of the Provincial Governments.

All provinces of British India except Baluchistan and federal territories like the province of Delhi, Coorg and Ajmer-Merwar, should have the same status, subject to certain safeguards and adjustments in the case of the North-West Frontier Province. Each of them shall have a popularly elected and unicameral legislature to legislate on all subjects assigned to the provinces. Provincial legislation will be supreme in all matters which are provincial with this reservation that whenever a provincial governor thinks that a particular measure passed by the provincial legislature is prejudicial to the interests of a particular community, he shall reserve it for the sanction of the Governor-General in Council. Also minority community in the provinces should have the right to appeal to the Government of India against any measure which is passed by a provincial legislature and adversely affects minority communities. This is a necessary provision for interference by the Government of India especially in view of our advocating abolition of communal electorates and communal representation. In the newly created post-war States in Europe the minority interests are under the control of the League of Nations. Here in the case of India the Government of India should be placed in the same position in matters affecting the minorities as the League of Nations occupies for the new states in Europe.

The executive power in these provinces shall reside in the King, represented by a Governor appointed by him in consultation with the Governor-General, and a cabinet consisting of the chief minister who shall be the leader of the majority party, and such other ministers as the chief minister appoints with the approval of the Governor. The chief minister should preside over cabinet meetings and the Governor should act only as a constitutional head. In Australia the Governors are appointed by His Majesty the King independently of the Governor-General, in Canada the provincial Lieutenant Governors and in South Africa the Provincial Administrators are appointed by the Governor-General of each dominion, but in the case of British Indian Provinces both principles shall have to be combined to satisfy the minority community, so that neither the Governor shall be subservient completely to the Government of India nor absolutely independent of it. There should be no statutory provision for communal representation in provincial cabinets but conventions as suggested for the central cabinet should also be observed for provincial cabinets.

The Provincial Judiciary.—The provincial judiciary shall be independent of the control of the legislature or the executive, and each big province or a number of small provinces combined for the purpose shall have a high court which shall supervise the lower provincial courts. The provincial judiciary shall have jurisdiction in all matters even affecting those that are federal but in these cases appeals shall necessarily lie to the Supreme Court. There shall be no separate federal lower courts in provinces but the

provincial judiciary shall do all that work on behalf of the Supreme Court.

North-West Frontier Province and Baluchistan.

The North-West Frontier Province should be allowed the same status inside the federation as the other provinces of India, with such safeguards as are necessary to protect all India interests in view of what has been said of the special position of this province and the repercussions of the tribal movements over the whole policy of the Indian government, in so far as it is related to the main question of India's defence. Either the province should be allowed to remain a federal territory or that it should have the status of a fully self-governing province. There can be no half-way house between these positions. In view of the strength of feeling among the Muslim community in general and the people of N. W. F. P. in particular, we unhesitatingly concede full provincial status to this province. But the people of the province should be prepared to bear the financial burdens. The Government of India should enter into an agreement with the provincial government in regard to such matters as Frontier Constabulary and maintenance of peace on the frontier between the five settled districts and the tribal country. The Governor of the Province should be the agent to the federal government for relations with the tribal country. Any amounts of money spent by the provincial government for discharge of those functions in which the federal government is concerned should be paid into the provincial treasury by the federal government and it is better that bloc-grants for specified periods be given by the

federal government to facilitate the smooth working of the provincial finances.

The provincial legislature should be composed of 40 to 50 members of whom at least one fifth should be nominated by the governor to secure special representation. A judicial system should be established for the province before it is admitted to the full provincial status.

As for Baluchistan, we differ from the views taken up by the Nehru Committee. The special situation of the province, its financial dependence on the central revenues, and its small population which is only a little above four lakhs, preclude the possibility of this territory discharging all the functions laid down on a provincial government inside the Indian federation. We, therefore, propose that Baluchistan should continue to remain a federally administered territory.

The Indian States.—The government of each State shall be the same as that at the establishment of the federation and this shall be guaranteed by the constitution subject to the provision that the Princes shall be at liberty to introduce such changes as they consider necessary for the good of their subjects. The Princes and their governments shall have unfettered liberty to deal with all matters not specifically assigned by the States to the Central Government whether under the terms of their treaties or the provisions of the federal constitution. With regard to the present control exercised by the Government of India for good government in the States, much of it will be done away with by securing to the States' subjects several important rights guaranteed to the citizens of the Dominion under the Declaration of Rights as hereinafter suggested, includ-

ing freedom of expression of opinion, freedom of conscience, right to protection of life and property and a writ of Habeas Corpus. Even then there will remain certain matters not assigned by the States to the federation, but in which at present the Crown has direct relations with the States. The Princes at the Round Table Conference in London declared that in these matters they would continue to have direct relations with the Crown. Most important of these are the dynastic affairs. The demand of the Princes means that in some State affairs the State Governments should have complete autonomy, in others assigned to the federation the federal government shall have authority, while in some others the Princes shall have direct dealings with the Crown without interference by the federal government. This creation of triple authority in a federation will be an anomaly in federalism, and it would negative the right of India to full Dominion Status. The continuance of the principle of 'Paramountcy is paramount' will not only be against the terms of the treaties between the Crown and the Princes but it has created no little dissatisfaction. It has to be satisfactorily solved in keeping with the internal sovereignty of the Princes. And though the right of the Crown to settle questions of disputed succession and checking maladministration cannot be questioned in the light of the terms of their treaties, the establishment of a suitable machinery to deal with these problems is very necessary. The almost arbitrary methods so far employed by the paramount power under the veil of paramountcy have encroached upon the sovereignty of the Princes. And, therefore, without subjecting the Princes to any undue

authority of the federal government we suggest that the Chamber of Princes as reconstituted, or a Standing Committee thereof, should look into such matters, including the dynastic affairs, as the Princes wish the Crown to deal with, and advise the Governor-General. This will assuredly give the Princes greater security and freedom from outside control than they are likely to get by submitting themselves to the arbitrary control of the Crown. For, it cannot be doubted that the Princes will better safeguard the rights and privileges of the members of their order than the Crown alone who would, more often than not, be influenced by all India interests even in the determination of the State affairs. Our proposal will minimise the chances of conflict between the federal and imperial authorities; it will also considerably enhance the authority of the Chamber of Princes and this will induce the Princes to take greater interest in the work of the Chamber than they have hitherto been taking. The final orders should, however, be issued by the Governor-General in the name of the Crown. Constitutionally the position of the Crown *vis-a-vis* the States will theoretically remain the same as at present. In actual practice, however, the difference will be great and it will remove the legitimate grievances of the Princes. But in matters definitely assigned to the central government outside the jurisdiction of the States, the central government shall exercise direct authority over the States' subjects who will own direct allegiance to the federal government. This is a very necessary condition if the Indian federation is to be a real and permanent polity. The Princes ought not to grudge a corresponding decrease in

their authority in these internal matters. Before the States of Australia or America went into federation they were completely independent of each other and yet they had to subscribe to these conditions and implications of a federal union, which assuredly led to a delimitation of their independence. But in the present case the Indian States are already very much subordinate to the authority of the Government of India even in matters of internal administration. Moreover, if the States lose a part of their freedom they will gain much more by being allowed control over all matters common to them and British India by their direct representation in the central legislature. In fact, this is the most important part of the Indian constitutional problem and the parties concerned ought to be prepared to make mutual sacrifices for the common good of the country. We have already indicated how the residuary and unenumerated powers shall belong to the States themselves and this will give them a higher status than given to the provinces, a fitting recognition of their treaty rights, and the Princes would not at all suffer in their dignity and authority inside their States. It augurs well for the future of the Indian federation that the Princes have willingly consented to make sacrifices for the good of the whole country.

There shall be no political agents or residents to check the Princes or heap over them the various indignities and hindrances of which the Princes have so often complained. In fact, the inclusion of the States in the federation under the terms suggested and to be suggested in this chapter will in every way enhance the present position which they occupy *vis-a-vis* the British Government.

The Chamber of Princes shall be continued and it shall be made really representative of their order. It shall deliberate on all matters common to their States and in this way the Princes will be enabled to come into line with regard to their internal administration. Also the Chamber shall have authority to appoint a committee to advise the Government of India on such matters as may vitally affect their interests. In matters of succession or maladministration the Chamber shall have authority to decide the questions subject to award by the Supreme Court and final appeal to the Privy Council.

This will also secure to the States greater financial control in the fiscal policy of the federation. And the suggestions hereinafter made regarding the financial matters will enable them to develop their resources.

Financial Devolution.—After the distribution of powers between the central and state governments in federations, the next thing in point of importance is the allocation of revenues to each. The principle that ought to govern this division of sources of revenue is giving each government sufficient funds to enable it to discharge the functions laid upon it. And this, when looked at from the point of view of administrative convenience, may be best done by giving to the central government those sources of revenue as are of national incidence and reserving to the States or provinces those sources that are mainly local. But in this division it is extremely difficult to arrive at preciseness due to overlapping of most of the sources. Another difficulty which results from such a division is that neither government may get funds to meet all its needs, some

may get more and others less.

Another important principle observable in most of the modern federations is that the central government is given indirect sources of revenue. This was conspicuously adhered to when these federations were originally formed, because most of them are creations of independent states and these jealously guarded their independent character and did not allow the newly established government to encroach upon the state revenues. The examples of pre-war German Empire, U. S. A. (up to 1913), and Switzerland are characteristic of this tendency. But when its actual working allayed the fears of states the central government was allowed to raise direct taxes. Amendment sixteenth of the U. S. A. constitution, passed in 1913, provided ;

“The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States and without regard to any census or enumeration.”

In Republican Germany, too, the central government is authorised to raise direct taxes. And it is Switzerland alone at present where the Cantons are still jealous of the authority of the central government and deny to it raising of direct taxes to meet its needs. The sources of revenue of the Central Swiss Government are income from federal domain, federal customs duties levied at the federal frontiers, posts and telegraphs, powder monopoly, half the tax on exemption from military duty, and contributions by Cantons.

Still, in almost all modern federations the central government has mostly indirect taxes,

e. g. Customs, Railways, Posts and Telegraphs, and income from Mints and Coinage. It is curious to observe that the Swiss Central Government has not the charge of coinage and it cannot issue paper money which could give it a good source of revenue.

Another point worth noticing is that at present in all federations except Switzerland, the central government pays subsidies to the state governments on account of surpluses which it yearly holds. In the United States of America the Union Government gives additional subsidies to some of the states that are too poor to discharge the functions laid on them. Upto 1927 the Commonwealth Government in Australia used to pay subsidies to the states on a per capita basis but since then the subsidies have been fixed on population basis. It is in Switzerland alone that the central revenues fall short of the central expenditure and consequently the Cantons pay contributions to the central government to enable it to meet the expenditure. Here in the case of India, the provinces had to pay contributions to the Central Indian Government upto 1928-29 when the contributions were wiped off.

The Finances of the Central Indian Government.

The above principles ought to be borne in mind while adjusting the allocation of revenues between the Central Indian Government on the one hand, and the provincial or State governments on the other, inside the future Indian federation. But one thing which is most important in the case of India as contradistinguished from other federations is that so far as British India is concerned it is the Central Government which is

de jure the controller of all revenues, which has to part with some sources to the provinces and not the *vice versa* as happened in the case of other federations. And, therefore, it would not be difficult to allow the Central Government of India to retain the right to levy direct taxes upon the present provinces of British India, although some new arrangements shall be necessary regarding the Indian States. Apart from all the income from such provinces and territories as N.-W. F. Province, Baluchistan, Delhi, Coorg, and Ajmer-Merwar, the chief sources of revenue of the Government of India are Customs, Railways, Mints and Coinage, Salt, Opium, Income Tax and other minor heads, Posts and Telegraphs. Almost all of them except income tax are indirect taxes. And all of them are profitable sources except posts and telegraphs which are a losing department. Upto 1927-28 provincial contributions were also an important source of the central revenues. Now taking the year 1928-29, the first year in which there were no provincial contributions, the budget estimates indicated the following amounts under each head :—

Revenue.

Principal heads of Revenue—

			Rs.
Customs	..	...	50,18,37,000
Taxes on Income	...	...	16,99,58,000
Salt	...	...	7,00,08,000
Opium	...	...	3,47,77,000
Other heads	...	...	2,20,10,000
Total principal heads			79,85,90,000

		Rs.
Total Principal heads	...	79,85,90,000
Railways; Net Receipts	...	38,50,00,000
Irrigation; Net Receipts	...	12,36,000
Posts and Telegraph Receipts	...	57,37,000
Interest Receipts	...	2,91,97,000
Civil Administration	...	1,01,32,000
Currency and Mint	...	2,48,81,000
Civil Works	...	14,61,000
Miscellaneous	...	81,82,000
Military Receipts	...	2,94,12,000
Extraordinary Items	...	26,67,000
Total	...	129,64,75,000

(Indian Year Book, 1929, p. 297.)

In future when India attains Dominion Status the income under Salt will decrease and may even disappear as Salt Tax has always been the most unpopular, and the recent movement of Civil Disobedience against this tax is bound to have its repercussions under self-government when the legislature will be supreme. Sir Walter Layton recommends the transfer of this tax to the provinces* but as he would get it collected by the Central Government and then distributed to the provinces on a population basis, it is difficult to understand the implications of this recommendation clearly. If the rate of taxation has to be determined by the Government of India and the collection too made by the central agency, it amounts to keeping the tax a central source. With regard to the distribution of its proceeds Sir Walter Layton's recommendation will be normally carried out in the scheme proposed here, in fact if not in theory. But the Indian States shall also have to be included among the recipients

*Simon Report, Vol: II, para 294.

of the income from this source. In this connection the view of the Government of India appears to be more reasonable and practicable. They would willingly transfer the proceeds from this tax to the provinces but they would not permit an enhancement of the rate for the benefit of the provinces.* In fact, the central federal government must be the sole authority to determine the rate, reserving it as an emergency measure to increase the rate to meet their increased demands in abnormal times. Similarly, under opium the income will considerably decrease on account of India being a party to the international agreement with regard to opium policy. Sir Walter Layton suggests that at the end of a decade after the new arrangements the income under this head will be nil. But income from Railways and Customs will increase, particularly under the latter item. The recent budget speech of the finance member indicates the protective policy of the Government and the increase in customs will be a popular and the most convenient means of increasing the central revenues. But supposing that the decrease and the increase under several heads cancel each other, the central revenues may be roughly put at Rs. 130 crores.

Sir Walter Layton has, however, calculated that the net increase in the income of the Central Government at the end of a decade will be about $4\frac{1}{2}$ crores of rupees. But the Government of India do not share his views. They say that the scheme "is conceived in a spirit of optimism which we find it difficult to share, having regard

*Government of India's Despatch on the Report, 1930, para 61.

to the general economic conditions, with which India and indeed the world in general are likely to be faced in the years immediately before us, to certain omissions in Sir Walter Layton's survey of the central government's position to which we shall refer again, and to the reluctance which may well be felt by the representatives of the people in the provinces to impose new burdens of this magnitude".* This view appears to be more approximating the true state of affairs. But although the Government of India too have not put forward any scheme which may be workable for the All-India Federation including the States, their estimates and proposals, subject to such modifications as are necessitated by the inclusion of the States in the federation, can be safer guides in contemplating future changes than Sir Walter Layton's too optimistic scheme. It is true that at this stage and without practical experience of the actual working of the future federal finances of India we may safely conclude that in the near future there shall be no great increase in the net income of the Central Government. It does not, however, mean that when the federation actually comes into being the possibility of increase in the income is remote. We only rely on a lower figure rather than inflate the estimates which might seriously jeopardise the whole scheme, and for this reason we rule out the chances of a windfall.

As regards expenditure the following figures give the estimates for the same year:—

		Rs.
Direct demands on the Revenues	...	4,24,84,000
Railways	...	33,02,00,000

* Government. of India's Despatch, para 56.

			Rs.
Posts and Telegraphs	...	...	81,66,000
Currency and Mint	...	...	69,63,000
Civil Works	...	...	1,73,31,000
Miscellaneous	...	...	4,10,06,000
Extraordinary Items	...	...	4,50,000
Debt Services	...	...	14,90,61,000
Salt	...	...	6,41,000
Irrigation	...	...	23,10,000
Civil Administration	...	...	11,69,45,000
Military	...	...	58,04,12,000
Total expenditure charged to Revenues			1,29,59,96,000
Surplus	...	...	5,06,000
Total			1,29,64,75,000

(Indian Year Book, 1929. p. 298)

The most unpopular head of expenditure is the "Military" which accounts for over Rs. 58 crores. When the Army has been completely Indianised and the department is entrusted to a minister responsible to the legislature, the military budget is bound to be drastically cut down.* And without risking the security of the country whether internally or from external aggressions the military budget shall not be allowed to exceed say Rs. 35 crores, and this will give a saving of Rs. 23 crores. The Civil Administration, too, is top-heavy on account of the excessive European element which has to be paid considerably higher salaries than could be given to equally efficient and able Indians. And as all services are bound to be Indianised there will be considerable savings under Civil Administration,

* Even in the transition period when defence will remain a reserved subject the military expenditure will be cut down due to progressive Indianisation of the Army.

which being roughly put at 25 per cent, the net saving would be about Rs. 8 crores. Leaving out of account other savings which will surely be effected under the policy of retrenchment which even the present irresponsible executive government considers necessary, the federal government of India is likely to have a surplus of Rs. 26 crores. This saving, as in all other federations, shall have to be distributed to the provinces and the Indian States, whether on a per capita basis or on some other basis agreed upon. These subsidies will enable the provinces and States to meet the resulting increased expenditure under education, sanitation, public health and other nation building departments. The States' demand for a share in the income of the Government of India would also be met.

Estimating the net savings in the expenditure to be 20 crores in the military side and 17 crores (roughly 25 per cent of the present scale) in the civil departments, the total saving would be nearly 37 crores. This saving should be distributed among the component parts of the federation in the following ways :—

- (1) Certain temporary subventions to the Indian States if found very necessary to compensate them for the surrender of a part of their revenues to the federal government, e. g. income from mints and coinage, tariffs, railways, (if they are willingly transferred by the States to the federation) and such other sources. These temporary subventions will necessarily have to be determined according to the losses of revenue incurred by

the individual States and not on a fixed scale, nor for all States but only for those that are affected by the new changes.

- (2) Special subsidies to those backward States and provinces which need them in the form of grants-in-aid for special purposes, especially education, health and such other departments. These should be determined according to the needs of the provinces and States. The responsibility of the central government for the uplift of the citizens and their general progress, in the constituent parts of the federation must be admitted. In other federations too such responsibility is shared by the central federal government. In Canada, British Columbia and Prince Edward Island, and in Australia, Tasmania and Western Australia get such special grants.
- (3) Assignments to all the provinces and States to enable them to meet the increased demands in the nation building departments. These assignments should be determined on a population basis which is undoubtedly the least controversial of all methods. In other federations, too, assignments on population basis are given, e. g. in the Commonwealth of Australia. In the case of India the assignment on population basis will ensure equitable distribution of the money realised

from the provinces and States in the form of salt tax, as suggested by Sir Walter Layton.

As regards the present debt of the Government of India, it is true that the States cannot be held accountable for any portion of it. But all interests thereon as well as any contributions to the sinking fund shall have to be paid out of the consolidated revenues. In future, however, when the States shall have a proportionate voice in the federation, all future debts incurred shall have to be spent for the good of the whole country including the States, and, therefore, the States' liability to a proportion of that debt would be unquestioned.

India being mainly an agricultural country, it is subjected to famines—States as well as provinces—which often occur whether due to scanty rainfall, too heavy rainfall or the invasion of pests as locusts. At present the Government of India holds considerable sums in the famine insurance fund. And as famine, even though it may be confined sometimes to this province or State and sometimes to that, is surely to be considered a national calamity too great to be combated by the province or State affected, the famine insurance fund shall have to be continued even under the federal government, with this change that the States shall also contribute to and benefit by it.

The idea of having a state bank for India is gaining support and it is necessary that when a federal bank has been established, which it will be extremely necessary to do, and the Round Table Conference has also consented to it, the States and provinces alike would benefit from it.

And it would be necessary, to raise loans whether for the Central Government or for the provinces and States, to entrust this work to the federal bank.

When during the finance membership of Sir Basil Blacket, a Bill for the establishment of a Reserve Bank came up before the Legislative Assembly, the principle of the Bill was unanimously accepted but the Bill was subsequently withdrawn by the Government as the opposition insisted on giving the legislature the right to nominate a certain number of directors. The discussions at the Round Table Conference show that the federal bank should be established on a commercial basis without the possibility of any political controversy arising in its directorate and management. This is assuredly a sound principle, and as the future Central Government shall be responsible to the legislature—and even for the transition period granting of financial responsibility has been accepted by all the parties, though subject to certain safeguards—with complete control over finance, there should now be no opposition to keep the management of the federal bank out of the vortex of political controversy. The federal bank should be the sole banking department of the federal government, and it would be wise and safe for the governments of the various provinces and States in the federation to entrust all their banking business to this bank.

Another kind of financial control to be exercised by the Central Government over the provinces and States should be through the Central Audit Department. It will be extremely necessary to do so in view of the subsidies which the Central Government shall pay to the provinces and the

States, for the latter might be tempted to launch upon extravagant schemes relying on those subsidies. But while the Audit Department shall exercise great control by suggesting economy in provincial expenditure, the States shall have greater liberty in their spending departments as they shall be the repository of residuary powers and shall necessarily exercise greater financial control in their sphere than the provinces.

Provincial Finances.—The principal sources of revenue in the provinces at present are Land Revenue, Excise, Stamps, Forests, Registration, and minor heads. And these should be allowed to remain provincial. The provinces also receive a part of the income tax according to Devolution Rule XV which runs :—

Whenever the assessed income of any year subsequent to the year 1920-21 exceeds in any Governor's province or in the province of Burma the assessed income of the year 1920-21, there shall be allocated to the local government of that province an amount calculated at the rate of 3 pies in each rupee of the amount of such excess."

In some other federations, *viz.* U. S. A., Australia and Canada, although the central governments impose direct taxation on all incomes, states and provinces are also allowed to levy a tax of their own on these incomes. But the Indian provinces have no such power granted them. The Indian provinces should be allowed a more definite share in the income tax realised in their respective territories, and as this tax is realised by the agents of provincial governments, such an inducement would considerably influence them to work the department most efficiently. Sir Walter Layton

and the Government of India have accepted this principle of granting the provinces the right to levy surcharge, in a fixed proportion, on the income tax realised in their territories.* The Indian States inside the federation should also enjoy this privilege to increase their incomes and this will partly remove their present grievance in this matter.

The chief source of income of the provinces is land revenue, but in those provinces where there is permanent land revenue settlement as in Bengal, Bihar and Orissa, the income from land revenue is proportionately much smaller than what it is in other provinces. The disparity in the average incidence of land revenue in the several provinces is very great. In the ryotwari areas the land revenue is Rs. 2/- per head, for example in Madras, while in the permanently settled zamindari areas like Bengal it comes to only $\frac{3}{4}$ of a rupee per head. Therefore, the provinces with permanent land revenue settlement should be allowed to levy a tax on agricultural income as the present income tax is only on non-agricultural income. This will help those provinces considerably and will also bring them economically on the level of other provinces. Bengal, Bihar and Orissa will thus profit most, as they have suffered most.

Sir Walter Layton recommends the abolition of the exemption of agricultural incomes from Income Tax.† But the Government of India mildly dissent from his view. They say, "How-

* Simon Report, Vol. II, para 297. Government of India Despatch, para 62.

† Simon Report, Vol. II, para 319.

Layton's arguments, we must face the reality that this exemption has the sanction of long tradition and that dealings in land have always been conducted on the assumption that it would remain. The opinion of local governments, with few exceptions, are definitely opposed to it and for practical purposes we regard its imposition as unlikely in the near future. We have some sympathy with the view expressed by more than one province that it is a form of taxation which should only be imposed by a representative and responsible government, and this in fact means that it should not be imposed upon a province on the vote of the central legislature, but that the representative legislature in each province must be free to decide for itself".* The acceptance of the principle of granting responsibility in the central government removes, to some extent, the objection of the Government of India. Our proposal, however, is that it should be the right of the provincial government to impose income tax on agricultural income. This would only give greater power to the provincial governments to increase their income by giving them the additional source of income, but it would also be consistent with the principle of keeping land revenue a provincial subject. This would result in two things. Firstly, those provinces that have permanent settlement would naturally be the first to gain by imposing the tax and in this way they would remove, to some extent, the present disparity in the rates of land revenue in the various provinces under the different systems of land revenue. Secondly, it would not make it obligatory on those provincial governments to levy the

* Government of India's Despatch of 1930, para 69.

tax that have any objections because of the already existing heavy rates of land revenue in their territories. It may be argued here that this scheme might result in removing the present uniformity in the rates of income tax. But as the income tax on non-agricultural incomes will be uniformly levied by the Central Government, and that on agricultural incomes by the provincial governments at their own rates, and as land revenue at present is not uniform nor can it be made uniform because of its being a provincial matter, and also because of other difficulties, too much insistence on uniformity is neither practicable nor desirable.

The income from Excise will undoubtedly decrease under the policy of prohibition which is being adopted here. But the development of new schemes of compulsory education, sanitation, agriculture, industries and public health will require greater sources of revenue. Some of it, as already suggested, will be supplied by subsidies out of the surplus of the central revenues. Under the present constitution, the provincial governments are allowed to impose certain taxes and those should be continued in the future with greater freedom from the control of the Government of India. The aim should be to make the provinces financially as much independent as they are made in actual administration.

After the Reforms of 1919 the provinces were allowed to raise loans for certain specific purposes, under certain restrictions. They should be made more independent in this respect compatible with their new status. But to check unhealthy competition in the market, the Central Government should float such loans through its bank. In this

matter the recommendations of Sir Walter Layton and the Government of India, to lay down regulations for raising loans, are very practicable.

The Finances of the States.

It has already been stated that inside the federation the States would enjoy greater freedom than the provinces. Evidently, therefore, the States would have correspondingly greater financial independence compatible with their status. In the case of provinces the Government of India has to part with a certain part of her revenues by provincialising certain sources of revenue. But in the case of States the process will be quite different. The States would certainly have to waive their claims regarding those principal heads of revenue which have been indicated to properly belong to the central government. No doubt, compensatory subsidies shall have to be given to some of the States that shall be adversely affected by the arrangement, e. g. in the matter of centralising Salt, Opium, Customs, Railways, and Post and Telegraphs revenues to the central government.

But in those other sources of revenue not assigned by the constitution to the central government the States shall have full independence as at present. But due to certain obligations on the central government, e. g. to see that every citizen in the federation receives elementary education, the States shall have to reconcile their financial policy with that prevailing in the rest of the country. And this will necessitate the separation of the Princes' privy purse from the States' general budget to enable an efficient system of administration to grow. And this by

no means militates against the monarchical form of government which the States will be free to continue. Also the General Audit Department of the Government of India shall have the right to audit States' accounts, though its report would only be submitted to the States' Governments.

And these arrangements together with the political changes mentioned in the earlier sections of this chapter will remove almost all those objections which the Princes put forward against the present fiscal policy of India. And as the central government in which the States shall have their due share shall deal with customs, coinage, mint, weights and measures, opium policy and salt duty and all other portions of the fiscal policy of the Government of India, the States shall not run the risk of being forced to adopt a policy in the making of which they have, as at present, no voice. In this regard the Butler Committee has only recommended that the States do deserve a share in the revenues of the British Indian Government derived under certain important heads, *e. g.* Customs, Salt, Opium, Posts and Telegraphs, Railways, Coinage, and Mint etc. Sir P. S. Sivaswami Aiyer, on the other hand, repudiates the States' claim on the ground that British India from her better geographical position must continue to reap all these advantages and the States need have no complaint in this matter.* But both these views did not take account of the conditions arising out of the establishment of a federation in India, including the States. And although the Butler Committee's view cannot be accepted as a permanent arrangement to allow the States a share in the revenues

* 'Indian Constitutional Problems,' p. 253.

of the Government of India from those sources, yet the other view is equally open to objection by not taking into account the important fact that because the States are helpless as against the present Government of British India they really have reasonable grievances. Be that as it may, if the future federation is to be an accomplished fact satisfactory to both parties, *viz.* British India and the Indian States, the suggestions made herein shall have to be given effect to.

There is another important matter to be taken into consideration regarding the States' financial relations. Till now the States have been considered to be in subordinate alliance with the British Government, and as a sign thereof they pay certain tributes to the British Government, *i.e.* the Government of British India. Inside the future federation the States would not be subject to this sort of alliance. They would be equal partners in it. The tributes shall, therefore, have to be given up and the States affected thereby would be allowed to retain those sums. This will mean abandonment of the present paramountcy theory which militates against the idea of 'Dominion Self-Government' for the whole country including the Indian States as equal partners inside the Indian federation. And it will, to that extent, enhance the status of the States *vis-a-vis* the Crown.

Summary of Financial Arrangements Proposed.

We may summarise here the proposals for financial arrangements made herein for the future federal constitution of India:—

- (1) The sources of revenue of the federal government should remain the same

as have been allotted to the Government of India under the Government of India Act, 1919, Devolution Rules. The transfer of income from commercial stamps to the Central Government as suggested by Sir Walter Layton and accepted by the Government of India, may be provided for future arrangements.

- (2) The provinces should have the same sources of revenue as they at present have. In addition they should have the right to impose some other taxes, e. g. Income Tax on agricultural incomes, Excise on foreign liquors consumed in their territories, Excise on matches and tobacco etc. They should also be allowed to impose a surcharge on Income Tax on persons living in their territories.
- (3) The States should surrender to the Federal Government all those sources of revenue as are assigned to the Central Government in keeping with (1).
- (4) There should be a Federal Bank to do all banking business of the federal and provincial or State governments including the raising of loans.
- (5) A federal Financial Council, as proposed by Sir Walter Layton, composed of representatives of the provincial Government, representatives of the Federal Government, and representatives of the Chamber of Princes, should be established. Its function

should be to determine joint fiscal affairs, e. g. raising of loans, and the making of necessary regulations for that purpose, imposing of tariffs, granting of subsidies, subventions and assignments to the provinces and the States. Its functions should, however, be purely advisory, the final voice to remain with the Finance Department of the Federal Government.

- (6) The establishment of an audit department to audit federal, provincial and State accounts and to suggest uniform system of accounts keeping, this being essential to regulate and understand the complications of the finances of such a large number of autonomous provinces and States.

Other Suggestions.

With the establishment of federation, the constitution shall have to incorporate certain other provisions to solve some of the problems peculiar to this country. A declaration of rights has more or less become a necessity, perhaps a fashionable necessity, in drawing up modern constitutions, of whatever type they may be. But in the case of a federal constitution for India the necessity of such a declaration in the constitution itself has an importance all its own. The recent discussions reveal a great amount of distrust among the minority communities which are present in all provinces. They think, perhaps not very unreasonably, that when provinces get autonomous governments, the majority rule would imperil the existence and trample upon the rights of the

minorities. Therefore, they want security against such a danger. This security, in a federation, cannot be better provided for than by a declaration of rights in the constitution itself. This declaration will, among other things, guarantee religious freedom to all, right of elementary education, freedom of association, use of public places, roads, wells etc., and appointment to Government services without any distinction of caste, creed or race. All citizens will be equal before the law. The State shall neither have a religion of its own nor would it favour or patronise any of the existing ones. The life and property lawfully acquired or possessed at the time of establishment of the federation will be protected by the State. There shall also be the rule of law.

As regards the question of languages, all the provincial vernaculars cannot be recognised as the official languages of the federal government for purposes of keeping record etc., and although inside the central legislature no member should be compelled to speak in a particular vernacular, it is necessary to extend official recognition to a few only. India being a part of the British Commonwealth and also a member of the League of Nations, it is necessary to retain English as one of the official languages. Besides English, Urdu and Hindi should be the other official languages, the former to satisfy 70 million Muslims and the latter as being the most widely understood in all provinces and claiming the largest number of speakers in the country. And in the various provinces children should be taught through their mother tongue and their own culture imparted to them. This is also a necessary provision to incorporate in the federal constitution

to give security to the minority communities.

As regards the amendment of the constitution, the provinces should be allowed to make any changes in theirs only with the consent and approval of the central government. And any amendments in the constitution of central government itself should be allowed to be made by two-thirds of the members present in the central legislature subject to a veto by the Crown. This will satisfy the minorities in British India and also give security to the Indian States.

Effect of these Suggestions.

We shall examine here how the problem as stated and discussed in the two preceding chapters will be solved by the suggestions made.

We first take up here the Indian States. Regarding the political part of this problem the States inside the federation shall have greater freedom and higher status than at present. They will have a distinct voice in the affairs common to them and British India. Their treaties, sanads and engagements will be guaranteed subject to such changes as shall result from the constitution which will be established with their own consent. No doubt, they will lose a part of their internal independence in so far as the central government will exercise direct authority over the States' subjects in matters falling within its sphere of action. But this is a very necessary implication of a federal government and the Princes must recognise its absolute necessity. Even at the present time the Government of India interferes in their internal matters in cases of maladministration. And on the other hand, the States' governments by virtue of their share in the

central government will have correspondingly important voice in those very matters concerning British India. As regards the settlement of disputes arising between two or more States or between any State or States and the central government, the Supreme Court, an independent judiciary, will have the right of awarding decisions and the Princes or their governments will be free to prefer an appeal in the Judicial Committee of the Privy Council. All these provisions solve the political aspect of the States' problem.

As regards fiscal relations, though the States will surrender some of their resources, *e. g.* Posts and Telegraphs, Opium, Currency and Coinage into the hands of the Federal Government, in return they shall also have a share in the surplus of the Federal Government's revenue. The Princes and their Governments shall have a voice in the determination of the fiscal policy of the Federal Government by their representation in the federal legislature. Also they need not maintain the troops as they do now and this will enable them to make considerable savings. And freed from the constant worries created by the changing temperaments of the residents they shall breathe freer air inside the Indian federation than at present. And as the constitution shall vest the executive government of India in the King through his Governor General the legal interpretations of their treaties shall not in any way be affected.

The Communal Problem—The communal problem in India is essentially minority problem. The Muslim minority community demands safeguards in the provinces as well as in the central government and also a great amount of freedom to the

provinces. As for the last demand we have sufficiently shown that a weak central government in such a large country will encourage centrifugal tendencies to grow stronger. The mere fact that a cry is raised for creating a 'Muslim India' is indicative of the non-constructive nature of the demand. The aim in all federations has been not to give opportunities for further dissensions but to create conditions which would remove whatever dissensions there may already be. Also, in all federations the recent tendency, based no doubt on practical experience, has been to give greater strength to the central government and it would surely be unlearning all that past history of the federations has to teach us, if we begin just as others began at the federative stage and then learn afterwards, but not without regret, that the central government must be very strong. In our case the presence of the Indian States further complicates the issue and it would be really a great misfortune if sentiment is allowed to predominate reason. Then again the question of defence, particularly on the north-west border is another reason why the central government of India ought to be very strong.

The other Muslim demands are, separate communal electorates and weightage communal representation in legislatures, communal representation in all services and cabinets, and safeguards for Urdu language and Muslim culture. Most of these safeguards, the Muslims themselves say, need be provided for only for such time as will bring the two communities, the Hindus and Muslims together. None of them considers these demands to be a permanent feature of normal healthy nationalism, but they opine that their

retention is necessary to bring about union. It is really absurd homeopathy to apply the principle "similia similibus curantur" to a solution of the communal problem in India. Unity is brought about not by creating wider gulf between the communities but by emphasizing the points of agreement between them. Past history of the communal problem in India, if it has to teach us any lesson at all, teaches us that the more the communal feeling is allowed to poison the mind of the future generation the greater the communal demands will increase. And it was really a most unfortunate day in the history of India when communal representation was allowed. Mr. Lionel Curtis, who can not possibly be charged with leanings towards any of these communities, thus speaks of it: "Avoid, if you possibly can, separate constituencies based on religious divisions. More than anything else, they will hamper and delay the development of responsible government in India... The concession of this principle when electoral institutions were inaugurated a few years ago, is the greatest blunder ever committed by the British Government in India.....The longer it remains, the more difficult will it be to uproot, till in the end it will only be eradicated at the cost of Civil War. To enable India to achieve nationhood, is the trust laid on us; and in conceding the establishment of communal representation we have, I hold, been false to that trust.

"The system has eaten into the life of the people so deeply that, already, it is not possible to abolish at one stroke what might have been refused a few years ago. And I feel that we shall be guilty of an unpardonable crime against

India if we fail now to make provision whereby these fetters, in which we have allowed her to bind herself, can be loosed." * These are strong views but they are more true now than when they were written more than a decade ago. And the communal concessions granted under the Reforms of 1919 have further embittered the feelings of the two communities who, at the polls, vote for the man who poses himself to be a greater enemy of the other community than another candidate who is a nationalist.

The Nehru Committee had struck the right note when they had recommended abolition of communal electorates and representation and provided for adult universal suffrage. The suggestions we have made here are based on this view and it is hoped that the Muslims would not suffer under these provisions. The separation of Sind and the federal form of government, undoubtedly, gives them sufficient power in at least five provinces and a very large proportion of their population will thus be in power in the administration. The following figures speak for themselves :—

(Population of Provinces with Muslim majorities as in 1921).

Province.	Muslim population.	Percentage of Muslims.
Sind. ...	2,406,025	73·4
Baluchistan ...	337,282	87·31
N. W. F. P. ...	2,062,786	91·62
Punjab ...	11,444,321	55·33
Bengal ...	25,280,862	53·99
Total ...	41,491,214	...

The total Muslim population of British India

*Curtis. 'Dyarchy,' pp. 440-441. Letter No. XII.

being 59,444,331, we find that under the suggested constitution 41,491,214 Muslims, *i.e.* 69·8 % of their total population in British India will be in power in these five provinces, and it is only 30·2 per cent of their population which is spread over the remaining provinces. But the Sikhs, the Christians, the Parsis and other communities in no province form even a large minority, the Muslim minority problem is nothing when compared with the problem of these communities. And when it is remembered that if for the sake of 30·2 per cent of their population the pernicious principle is adopted, it will also be necessary to concede the claims of other minorities, the only practical solution is the total abolition of communal representation.

Another point to be borne in mind is that in future, and even at present, the main problem in the state will be that between the capitalists and labour, and that between the zamindars and their tenants. In both these the people divide themselves not as Hindus and Muslims but as capitalists, labourers, zamindars and tenants, and each group contains all communities and the interests of each group are based not on religious but on economic grounds. So that the Indian society is primarily divided by horizontal, and not vertical lines. And as responsible government is established, its working will raise problems which will sharpen these horizontal lines and obliterate the others. Even the past history of legislation in India points to the same conclusion, and, therefore, it is the economic barriers and not the religious or the quasi-religious ones which the constitution has to take account of.

Regarding safeguards for Urdu language and

Muslim culture, suggestions have already been made that both Hindi and Urdu should be recognised as the official languages of the Central Government and that all Government records must be kept in both languages, and that children should be taught in their mother tongue. But one thing which is very instructive in this connection and shows how Muslim fears are unreal and baseless, may be mentioned here. At present there is no compulsion for the teaching of Hindi or Urdu or any other vernacular. Every parent is free to teach his son whatever vernacular he wishes him to learn. Similarly, authors may write books in Hindi or Urdu or any other language. But what is the practical effect of all this? There is a very large number of Hindus who write books in Urdu and are versed in Muslim culture but there is hardly any Muslim who is an author of Hindi books. Again, taking a concrete example of the United Provinces, the following linguistic returns for the High School Examination tell their own tale :—

Year.	Total No enrolled.	No. of those offering Hindi	No. of those offering Urdu	Percentage of Urdu candidates.
1927.	7,538	3,728	3,163	41.9
1928.	8,756	4,452	3,659	41.8
1929.	9,786	4,970	4,046	41.4

But the Muslim population is only 14 per cent of the total. And when it is remembered that hardly even one per cent of the Muslim candidates offer Hindi as their vernacular, the number of Hindus offering Urdu is almost twice as great as the number of Muslim candidates offering Urdu. And all this is under no compulsion, so that the Hindus are themselves more inclined to learn Urdu

language and literature than they ought to be. This clearly indicates that the Muslim fears regarding their language and culture have no basis. And if there is really need of protection it may be for the Hindi language. As regards other vernaculars, it will suffice to say that in all provinces the provincial vernacular will be the official language and the minority languages shall be the media of instruction for the children of those minorities.

And all this applies *mutatis mutandis* to the Sikhs, Parsis and other minorities.

As for the depressed classes, the discussions in the preceding chapter clearly indicate that their problem is not political but social and economic. And the recent social movement is rapidly solving their difficulties. Indeed, no constitutional safeguards can coerce a whole nation into giving up the old conservative views all at once. It is the growth of education, freer social intercourse and the community of economic interests which is bound to remove their grievances. The depressed classes are sub-castes of the Hindus and are spread over the whole country and in no province do they form a mass whose problem may be solved by the application of any principles of federalism. The declaration of rights as embodied in the Nehru Report and the provision of adult suffrage will give them more than what they can expect by any other undemocratic device.

And lastly, it is to be remembered that "people cannot be compelled by treaty to love their neighbours and as long as they continue to hate them they will devise means of injuring them".* It is only mutual toleration for a long time which conduces to the fostering of love and trust between,

*L. P. Mair 'The Protection of Minorities'. p. 20.

different communities. The Muslims have to remember that they are sons of the same motherland as the Hindus and that they have to absorb themselves in Indian nationalism and not in Muslim isolation and that "the Minorities cannot expect to be treated as friends and fellow-citizens if they regard themselves as foreigners, and put their faith in their kinsmen beyond the Frontier".* The recent Khilafat Movement and the Indian Muslim interest in the matters of Iraq or Mesopotamia or Egypt only show how they feel themselves more interested in isolating themselves from Indian nationalism than in absorbing in it.

Conclusion.

Federalism is a very popular idea in India today. The vastness of the country which is veritably called a sub-continent with the different provinces as countries, the diversities in the composition of the population with regard to religions, languages and customs, have indeed all combined together to suggest to the minds of many eminent thinkers of India that the happiness of the country lies in the adoption of the principles of a federal constitution to a solution of the Indian constitutional problem. The existence of the Indian States and their close relations with British India have further strengthened this belief. And in this movement an important influence has been the experience of several foreign countries, in Europe, in America, in Australia and Africa, which have used federalism in various degrees to solve some similar problems.

But although the advantages of a federal

*Idid. Introduction by Prof. Gilbert Murray. p. VIII.

polity are many, its dangers cannot be overlooked. It multiplies governmental machinery, introduces disharmony in national feelings by emphasizing provincialism and state particularism. And it was mainly on account of some of these defects inherent in federalism that Switzerland saw the outbreak of the Sonderbund and the soil of the United States of America was filled with blood during the Civil War. But the lesson of these two undesirable conflicts was not lost on the succeeding generations. Canada, Australia, South Africa, and Germany profited by it. And it is mainly due to that very experience that Soviet Russia and Brazil are slowly and cautiously marching towards federalism.

Indians have before them vast experience of these countries and they can surely avoid some of the dangers that threatened the latter in their efforts towards establishing a stable constitution. A most important factor that we in India, at present, have to bear in mind is the growth of internationalism after the war. If federalism favours provincialism and weakens nationalism, it is sure to eclipse internationalism which itself discourages nationalism. And if we are to look into our present problems with the ideal of internationalism, the necessity of a strong national government becomes very great. And this is assuredly what people in other federations are feeling today.

But all this requires constructive thinking and cool deliberations on the constitutional and administrative problems of federations. Foreign experience is, no doubt, a great help in such thinking. And a close study of the principles of federalism is very useful at this time in India if

we are to profit by others' experience. But although we cannot copy in toto the federal constitution of any other country, we shall certainly derive great advantage in constructing our own federal edifice—unavoidably necessary as it has become—by comparing the problems of others with our own and basing our conclusions on that comparative study. And this thesis is an attempt in that direction.

BIBLIOGRAPHY

- Adams, George**—‘The British Empire and a League of Peace together with an Analysis of Federal Government.’—(1919. G. P. Putnam and Sons, New York and London).
- Aitchison, C. U.**—‘Sanads and Treaties with the Indian Princes.’—(1862. Bengal Printing Co. Ltd. Calcutta).
- Aiyer, Sir P. S. Sivawami**—‘Indian Constitutional Problems.’—(1928. D. B. Taraporevala and Sons, Bombay)
- Ambedkar, B. R.**—‘The Evolution of Provincial Finance in India.’—(1925. P. S. King & Son, Ltd., London).
- Atherton, Mrs.**—‘The Conqueror.’—(A Novel).
- Auber, Peter**—‘Rise and Progress of the British Power in India.’—2 Vols. (1837).
- Banbhatt**—‘Hars Charitra’—(Nirnayasagar Press Bombay, 1918).
- Banerji, Pramath Nath**—‘Public Administration in Ancient India.’—(Macmillan & Co., 1916).
- ‘Fiscal Policy in India.’—(Macmillan & Co., 1923).
- Beard, Charles A. & Mary R.**—‘The Rise of American Civilization.’—2 vols. (1928. Macmillan Co.).
- Beni Prasad**—‘The State in Ancient India.’—(1928. Indian Press, Allahabad).
- ‘Theory of the State In Ancient India.’—(1927. Indian Press, Allahabad).
- ‘A Few Suggestions on the Problem of the Indian Constitution.’—(1928. Indian Press, Allahabad).
- Besant, Annie**—‘The Future of Indian Politics.’—(1928. Theosophical Publishing House, Madras).
- ‘How India Wrought For Freedom.’—(1915. Theosophical Publishing House, Madras).
- ‘The Birth of New India.’—(1917 Theosophical Publishing House, Madras).
- ‘India A Nation.’—(1917. T. P. H., Madras).

- Borden, Sir Robert Laird**—'Canadian Constitutional Studies.'—(Marfleet Lectures, University of Toronto, October 1921. Revised Ed. Oxford).
- Bourinot, Sir John**—'Canada.'—(1917. T. Fisher Unwin, London).
—'Canada Under British Rules.' 1760-1900.—(1900. Cambridge University Press).
- Bradley, A. G.**—'Canada.'—(Williams & Norgate, London).
- Brand, R. H.**—'The Union of South Africa.'—(1900. Oxford).
- Brooks, Robert C.**—'Government & Politics of Switzerland.' (1920. George G. Harrap & Co. London).
- Bruce, H. R.**—'American Parties And Politics.'—(1927. Henry Holt & Co. New York).
- Brunet, Rene**—'The New German Constitution.'—(1923. T. Fisher Unwin, London).
- Bryce, James (Viscount Bryce)**—'Constitutions.'—(Oxford University Press).
—'Modern Democracies.'—2 vols. (Macmillan Co. 1923).
- Chamber of Princes, Directorate of**—'The British Crown & The Indian Princes.'—(1929. P.S. King & Son).
- Channing, Edward**—'The United States of America.'—1765-1865. (1896. Cambridge University Press).
- Che'ney, Sir George**—'Indian Polity.'—(1894. Longmans Company).
- Chudgar, P. L.**—'Indian Princes Under British Protectorate.'—(1929. Williams & Norgate London).
- Clement, W. H. P.**—'The Law of the Canadian Constitution'—(Clarendon Press Toronto. 1916).
- Curtis, Lionel**—'Dyarchy.'—(1920. Oxford University Press).
- Das, A. C.**—'Rg'vedic Culture.'—(1925).
- Dicey, A. V.**—'Law of the Constitution.'—(8th. Ed. Macmillan Co.).
- Duguit, Leon**—'Law in the Modern State.'—English Translation by Frida and Harold Laski. (1919. George Allen & Unwin).
- Durham, Lord**—'Report on the Affairs of British North America.'—Edited by Sir C. P. Lucas. 3 vols. (1912. Oxford. Clarendon Press).
- Egerton, H. E.**—'The Causes & Character of the American Revolution.'—(1923. Oxford. Clarendon Press).
—'Federations & Unions in the British Empire.'—(Oxford. Clarendon Press).

- Emerson, Rupert**—‘State and Sovereignty in Modern Germany.’—(1928. Yale University Press).
- Encyclopaedia Britannica**—13th. Edition.
- Esmein, A.**—‘Elements De Droit Constitutionnel.’—(Septieme Edition. Paris. 1924).
- Fiske, John**—‘The Critical Period of American History, 1783-89.’—(1888. Macmillan Co.).
- Fraser. Lovat**—‘India Under Curzon & After.’—(1911. Willian Heinemann. London)
- Freeman, Edward A.**—‘History of Federal Government.’ vol. I. (1863. Macmillan Co.).
- Garret, G. T.**—‘An Indian Commentary.’—(1928. Jonathan Cape. London).
- Gundappa, D. V.**—‘The Problems of the Indian Native States.’—(1917. Karnatak Publishing House. Bangalore).
- ‘The Native States in the Indian Empire.’—(1918. K. P. H. Bangalore).
- ‘The Indian States & the Montagu Chelmsford Report’—(1918. K. P. H. Bangalore).
- ‘The Government of India & the Indian States.’—(1926. K. P. H. Bangalore).
- ‘The States in All India Polity.’—(1926. K. P. H. Bangalore).
- ‘The Indian States Committee.’—(1928. K. P. H. Bangalore).
- ‘Dominion Constitution for India and Indian States.’—(1929. K. P. H. Bangalore).
- Gyan Chand**—‘The Essentials of Federal Finance.’—(1930. Oxford University Press).
- Haksar, Col. K. N. & K. M. Phannikar**—‘Federal India.’—(1930. Hopkinson. London).
- Hamilton, Alexander**—(and John May and James Madison) ‘The Federalist.’—(Edited by Cabot Lodge. T. Fisher Unwin. London).
- Hamond, B. E.**—‘Outlines of Comparative Politics.’—(1903. Rivingstons, London).
- Harvard University**—‘Leading Cases on the Constitution of the United States.’—(1917. Cambridge. Harvard Cooperative Society).
- Hinkhouse, Fred Junkin**—‘The Preliminaries of the American Revolution as seen in the English Press.’ 1763-1775. (1926. Columbia University Press).
- Hobson, J. A.**—‘Towards International Government.’—(1915. George Allen & Unwin Ltd.),

- Ilbert, Sir Courtney**—‘The Government of India.’—(1 Edition. Oxford University Press).
- Jebb, Richard**—‘The Imperial Conference.’ 3 vols.—(Longmans Co. 1911).
- Keralaputra**—‘The Working of Dyarchy in India.’—1919. 28. (1928. D. B. Taraporevala & Sons, Bombay).
- Khan, His Highness the Aga**—‘India In Transition.’—(1918. Philip Le Warner, London).
- Keith, A. Berriedale**—‘The Constitution, Administration and Laws of the Empire.’—(1924. W. Collins & Sons. London).
- ‘Dominion Home Rule in Practice.’—(1921. Oxford University Press).
- ‘War Government in the Dominions.’—(1921. Oxford University Press).
- ‘Speeches & Documents on Colonial Policy.’—2 vols. (Oxford University Press).
- ‘Speeches & Documents on Indian Policy.’—2 vols. (Oxford University Press).
- Laski, Harold J.**—‘A Grammar of Politics.’—(2nd. Ed. George Allen & Unwin, London).
- ‘The Problem of the Administrative Areas.’—(Smith College Studies. IV. vol. No. I. October. 1918).
- ‘Foundations of Sovereignty & Other Essays.’—(George Allen & Unwin, London. 1921).
- ‘Authority in the Modern State.’—(Yale University Press. 1919).
- ‘The Problem of Sovereignty.’—(Y. U. Press 1924).
- Latham, J. G.**—‘Australia and the British Commonwealth.’—(1929. Macmillan & Co.).
- Lees-Smith, H. B.**—‘Second Chambers in Theory & Practice.’—(1923. George Allen & Unwin Ltd. London).
- Lee-Warner, Sir William**—‘The Native States of India.’ (1910. Macmillan & Co.).
- Lewis, Sir G. C.**—‘Government of Dependencies.’—(1891).
- Lodge, Eleanor C.**—‘The End of the Middle Ages.’—1273-1453. (4th. Ed. Methuen & Co. London).
- Lowell A. L.**—‘Governments & Parties In Continental Europe.’—(1917. Longmans Green & Co.).
- Macdonald, J. A. Murray**—‘The Case for Federal Devolution.’—(1920. P. S. King & Son).
- Macdonald, J. Murray & Lord Charnwood**—‘The Federal Solution.’—(1914. T. Fisher Unwin, London).

- Macdonald, J. Ramsay**—‘The Government of India.—
(Swarthmore Press).
- Mackay, Robert A.**—‘The Unreformed Senate of Canada.’
(1926. Oxford).
- Macy, Jesse.**—‘Party Organisation & Machinery in the
United States.’—(1905. T. Fisher Unwin).
- Mair, L. P.**—‘The Protection of Minorities.’—(Christopher
Press London).
- Marriot, J. A. R.**—‘Second Chambers.’—(1910. Oxford).
- Mitton, G. E.**—‘Austria-Hungary.’—(1914 Adam & Charles
Black London).
- Mookerji, Radhakumud**—‘Harsha.’—(1926. Oxford Uni-
versity Press).
—‘Local Government in Ancient India.’—(Clarendon
Press, Oxford. 1920).
—‘Fundamental Unity of India.’—(1914. Longmans
Company).
- Moore, W. Harrison**—‘Commonwealth of Australia.’—
(1910. Charles Maxwell Co. Melbourne).
- Morison, S. E.**—‘Sources & Documents Illustrating the
American Revolution 1764 1788 and the Forma-
tion of the Federal Constitution.’—(1923.
Clarendon Press).
- Molteno, Sir James Tennant**—‘The Dominion of the Afri-
kanderdom.’—(1923. J. Methuen, London).
- Morley, A. H.**—‘The New Democratic Constitutions of
Europe.’—(1928. Oxford).
- Neill, Swift Mac**—‘Studies in the Constitution of the Irish
Free State.’—(Talbot Press, Dublin & Cork 1925.)
- Newton, A. P.**—‘Federal & Unified Constitutions.’—(1923.
Longmans Co.).
—‘The Unification of South Africa.’—(1924. Long-
mans Company).
- Oliver, F. S.**—‘The Life of Alexander Hamilton.’—(1906.
G. P. Putnam & Sons. New York).
- Oxford University**—‘The Ethnology, Languages, Litera-
ture & Religions of India.’—(1912. Oxford).
- Pannikar K. M.**—‘Indian States & the Government of
India.’—(1927. London).
- Parkin, George R.**—‘Sir John A. Macdonald.’—(1909.
London).
- Paxson, Frederic L.**—‘The American Civil War.’—(Willi-
ams Norgate, London).
- Pioneer Press**—‘Indian Defence Problem.’

- Poincare, Raymond**—‘How France is Governed.’—(5th. Impression. T. Fisher Unwin).
- Poley, A. P.**—‘Federal Constiutions of the United States & the British Empire’. (Sir Isaac Pitman & Son. London. 1923).
- Pollard, A. F.**—‘Factors in American History.’—(1925. Cambridge University Press).
- Porritt, Edward**—‘Evolution of the Dominion of Canada.’ (1918. World Book Company. New York).
- Rao, Hosakoppa Krishna**—‘Swaraj Constitution.’—(May 1928. Prabhakar Press).
- Reed, Thomas Harrison**—‘Form & Functions of American Government.’—(1919. George G. Harrap. London).
- Riddel, W. R.**—‘The Canadian Constitution in Form & in Fact’—(1923. Columbia University Press).
- Sapru, Sir Tej Bahadur**—‘The Indian Constitution.’—(1926. Madras).
- Sarkar, Jadunath**—‘Moghal Administration.’—(M. C. Sarkar & Sons Calcutta).
- (Translated by) ‘Ahkam-I-Alamgiri.’
- Sarma, S. K.**—‘Towards Swaraj.’—(1928. Madras).
- Shah, K. T.**—‘Federal Finance in India.’—(Bombay, 1929).
- Sharma, Brij Mohan**—‘The Indian Constitutional Problem.’ (1930. Lucknow).
- ‘Federal Polity.’—(Lucknow, 1931).
- Singh, Gurmukh Nihal**—‘The Indian States & British India.’—(1930. Benares).
- Smelie, K.**—‘The American Federal System.’—(London).
- Smith, Goldwin**—‘Canada & the Canadian Question.’—(Macmillan Co.).
- Smith, Goldwin.**—‘The United States.’ (1901. Macmillan Co).
- Sudaridanam, A. N.**—Edited by, ‘Indian States Register and Directory’. (1929. Madras).
- Tandy, E. A.**—‘India’s Opportunity’. (Office of Near East London).
- Trevelyan, George Otto.**—‘The American Revolution’. 3 vols. (1905 Longmans Co.).
- Vakil, C. N.**—‘Financial Development in Modern India’. (1924. Bombay).
- Vincent, J. M.**—‘Government in Switzerland’. (Macmillan Co.)
- Wallas, Graham.**—‘Our Social Heritage’. 1921. London).
- Wattal, P. K.**—‘System of Financial Administration in British India’. (1923. Times of India Press, Bombay).

- Wedgwood, Col. Josiah C.**—'The Indo-British Commonwealth. (1921. T. P. H. Madras'.
Whyte, Sir Frederick.—'India A Federation?'. Government of India Publication.
Willoughby, W. W. 'The Nature of the State. (Macmillan Co. 1911).
Wilson, Woodrow.—'The State', (1919. London).
Wise, B. R.—'The Making of the Australian Commonwealth', 1889-1900 (1913, Longmans Co.).
York, Elizabeth.—'Leagues of Nations'. (1919. London).
Young, Hilton.—'Report on Closer Union of the Dependencies in East Africa'. (Cmd. 3234. London).
Zimmern, Alfred.—'The British Empire'. (1927. Oxford).

Government Reports, Reference Books, etc.

- Government of India. Statistical Abstract for British India, 6th Issue. 1917-18 to 1926-27.
- Do. India in 1919-20.
 - Do. India in 1920-21.
 - Do. India in 1921-22.
 - Do. India in 1922-23.
 - Do. India in 1923-24.
 - Do. India in 1924-25.
 - Do. India in 1925-26.
 - Do. India in 1926-27.
 - Do. India in 1927-28.
 - Do. India in 1928-29.
 - Do. Montagu-Chelmsford Report.
 - Do. Report of the Franchise & Functions Committee.
 - Do. Report of the Reforms Enquiry Committee, 1924.
 - Do. Report of the Indian Central Committee.
 - Do. Report of the Butler Committee.
 - Do. Interim Report of the Education sub-committee of the Simon Commission.
 - Do. Government of India's Despatch on Simon Commission Recommendations.
 - Do. Administration Report of N. W. F. P. 6 vols. 1921-22 to 1926-27.
 - Do. Administration Report of Baluchistan, 6 vols. 1921-22 to 1926-27.
 - Do. The Army & Its Administration in India.
 - Do. Linguistic Survey of India, vol. I.
- Government of U. P. Report of the Provincial Simon Committee.

- Report of the Nehru Committee. 1928.
 Report of the Enlarged Nehru Committee.
 Report of the Simon Commission. I vol.
 Do Do II vol.
 Report of the Proceedings of the All Parties Convention, Calcutta, 1928.
 Proceedings of the Round Table Conference, London, Cmd. 3778
 Indian Year Book 1929.
 Indian Year Book 1930.
 Statesman's Year Book for different years.
 The New International Year Book, vols. for 1910 & 1914.

SUPPLEMENTARY LIST.

- Brady, Alexander**,—'Canada', (Ernest Benn. London, 1932).
Kennedy, W.P.M.,—'The Constitution of Canada' (London 1922).
Chester Martin,—'Empire and Commonwealth' (London 1929).
Chapais, T.—'Coursd' histoire du Canada,' 4 vols. (Quebec. 1919-23).
Trotter, R. G.—'Canadian Federation. Its Origin and Achievements' (London 1924).
Siegfried, A.—'The Race Question in Canada'. (London, 1907).
Corbett, P. E., and H. A. Smith.—'Canada and World Politics'. (Toronto 1928).
Dewey, A. G.—'The Dominion and Diplomacy.' (2 vols. London 1929).
Keenleysid, H. L.—'Canada and the United States', (New York. 1929).
Wilson, Woodrow.—'Constitutional Government in the United States', (New York. 1917).
Holderness, Sir T. W.—'Peoples and Problems of India' (London, Williams and Norgate).
Sobei Mogi.—'The Problems of Federalism', (2 vols. George Allen and Unwin 1931).
Finer, Herman—'The Theory and Practice of Modern Government' (Methuen. 1932).
Ram, V. Shiva—'Comparative Colonial Policy' (Longmans. 1926).

BIBLIOGRAPHY

The Memoirs of Sir John A. Macdonald. 2 vols. (Ottawa. 1894).

Proceedings of the second sessions of the Indian Round Table Conference, (1932).

Report of the Indian Franchise Committee (Lothian Committee).

Report of the Sind Financial Enquiry Committee.

Report of the Federal Finance Committee.

Report of the Indian States Committee.

INDEX.

A

- Adams, John, 22.
 Afghan Kings, of Delhi, 133.
 Aga Khan, 293.
 Aiyer, Sir P.S. Sivaswami, on Indian States, 252-53, 274-75, 279-80, 285, 288.
 Ajat Satru, 127.
 Akbar, 135.
 Alauddin Khilji, 134.
 Ali Imam, Sir, 206.
 Ali Vardi Khan, 138.
 All India National Convention, 209, 216, 224, 234.
 Altamash 133.
 America, British North, 7, 31, 262, 70.
 —Latin, 70.
 —United States of, 3, 16, 23, 32, 34-35, 53, 61, 66, 70, 75, 82-3, 86, 91, 101-102, 109-110, 112-13, 274, 291-92, 295, 309, 318, 322.
 Antiochos, 127.
 Asoka, His Rock Edict XIII, 127.
 Aurangzeb, 135, 138.
 Australia, colonies of, 33.
 —Commonwealth of, 16, 32, 78, 83, 86, 91, 93, 95, 101-2, 108, 264, 274-75, 291-92, 294, 295, 318-19, 332, 341-42, 344.
 —Federation of, 32, 37, 45.
 —Federal Council of, 34.
 —Constitution of, 38-39, 50, 53, 67, 70, 75.
 Austro-Hungarian Confederacy, 34, 56, 75, 79, 292.

B

- Baber, 135.
 Bahlol Lodi, 135.
 Baldwin, 178.
 Baluchistan, Discussions, 245-46.
 Belgium and Holland, 52.
 Besant, Dr. Annie, 265.
 Bevans, Major General, report of 34.
 Bikanir, Maharaja of, 248.
 Birkenhead, Lord, challenges Indians

- to produce an agreed constitution, 206.
 Bismarck, 42.
 British Empire, Federal movement in 3, 42.
 Bryce, James, 4, 33, 71.
 Buest, 43.
 Bundesrath, of the German Empire 103.
 Butler, Sir Harcourt, 178, 254-55.

C

- Calhoun, John C., on theory of state rights 22-24.
 Canada, Union of 7, Dominion of 32, 36, 37, 45, 48-49, 53, 75, 83, 86, 88, 90, 93, 95, 101-2, 104-108, 113, 264, 280, 295, 318, 332, 335, 341, 344.
 Canberra, 78.
 Cape Colony, 39.
 Chamber of Princes, 201, 329, 333.
 Chanakya, 130.
 Changez Khan, 133.
 Chandra Gupta, 127.
 Chintamani, C. Y. 265.
 Christians, demands in India 188-89, separate representation (in 1919) 189.
 Clive, 139-40.
 Communal Question, (in India), problem of 183-90, demands of other communities 223-24.
 Congress (U. S. A.), and the Alien and Sedition Acts 23.
 Constitution, form of the Indian 263-75, 277-94.
 Council of State, Indian 321.
 Crewe, Lord, on the centralisation of administration in India 159, 284.
 Curtis, Lionel 301.
 Curzon, Lord, and N. W. F. P. 162.

D

- Dalhousie, Lord, 200.
 Dasrath, 727.
 Daultabad, 134.
 Decentralisation Commission, 159.
 Depressed classes, 225-29, 370-78.

- Dacey, Prof. A. V., on federalism 8-9, on weakness of federalism 69-70.
 Doulat Khan, 135.
 Durham, Lord, on conflict of two races in Lower Canada 45-49, on difference of languages in Canada 52-54, on religious amity in Canada 58-59, criticises Colonial policy of Britain 62-64, 280.

E

- East India Company, 36.
 Eldos, 133.
 Empire, comparison between Hindu and Mughal Empires, 163, 137.

F

- Federal Constitution, definition and requisites of 9-10, essential characteristics of 10-29, its importance and character 11, rigidity of 14, co-existence of two governments in a 16-20.
 — Court in Switzerland, 119-20.
 — Council in Australia 80, in Switzerland 110.
 — Executive, 107-111, in India 334-339.
 — Government, authority derived from the citizens 16, direct authority over citizens 17-18, Nature of 64-72, powers of 78-85, 292.
 — Judiciary, 112-120, in India 339-343.
 — Legislature 96-107, limitation of powers 97, bicameral form of 97, greater powers of the lower house 97-98, in India 322-334.
 Federalism, described 8, defined 7-9, factors contributing to the growth of 30-64.
 Federal Tie, Irrevocability of 21-29.
 Federation, tendency creating it 8, powers of provincial governments in 77, residuary powers in 94-95 separation of powers 96-120.
 Financial Devolution, in other federations, in India and in Indian States, 350-370.
 Fiscal Aspect, of Indian States' problem 256-63.
 France, constitution of 13, 34.
 Francis, 143.
 Francis Deak, 43.
 Freeman, E. A., on sovereignty of federal government 19, 3(8).

G

- Gaekwar, Maharaja, on States' demands 254.

- Gandhi, 205.
 George, I, 14, III, 61.
 German, Empire 43, 67; Republic 83-84, 86, 108, 113, 319.
 Ghayasuddin Tughlaq, 134.
 Gokhale, G. K., evidence before Welby Commission and Decentralisation Commission 163.
 Graham, Prof. M. W-338.
 Graham Wallace, 123.
 Great Britain, a unitary state with a flexible constitution 12, 13, 35, 109.
 Greece, 42.

H

- Habibulla, deputation to South Africa 51.
 Hailey, Sir Malcolm, on interpretation of 'responsible government' 205.
 Hamilton, 31-32, on benefits of American union 33, on commercial advantages from union 36, 91.
 Hanseatic League, 31, 34, monopoly of trade in North Sea and Baltic Sea 36.
 Hanover, 4.
 Harsa, 127-28, 131-32.
 Hastings, 200.
 Hindu, demands 187, 219-21.
 Holt, Sir John, on powers of British Parliament 12.
 Hydari, Sir Akbar, 290-91.

I

- Ibrahim Lodi, 135
 India, materials on ancient polity of 124-25, Ancient Hindu 125-133, smaller Kingdoms in 126, relations between the Emperor and subordinate rulers in ancient 129-31, Muslim period 133-139, under the British 139-179, seriousness of political problem 180-81, physical basis of her problem 181, climate and nature of population 182, British attempt to unify 183, religious distribution of population 184-85, the problem of languages 192-97, Hindi and Urdu 197.
 Indian Central Committee, 269.
 Indian Federation, Simon Commission 179, 210, 276, 279, 288-89, 291-94, 308.
 Indian National Congress, its programme (in 1885) 204, and Independence resolution 205, 210, 263, 265-66.
 Indian States, the problem of 197-208, spread over India 197, area

and population and revenue of 198-99, number of 198, contrast inter se 198, and paramount power 199, and Royal Proclamation (1858) 200, their four demands 201, their fiscal grievances 202, and their own subjects 202-3, their administration 203, discussions on the problem 246-63, conference of the people of 249, political aspect of the problem of 249-56, British Lawyers' legal advice on 250-51, British Indians' opposition to this view 51-52, Sir P. S. Sivaswami Aiyer on 252-53, Fiscal aspect of the problem of 256-63, 269, 273, 276, 278, 288, 290, 292-93, 296, 306-310, 316-17, 320, 322-25, representation in the federal legislature 328, 329-33, 335, 337, 346-50.

Ireland, religious differences in 58.

Irwin, Lord, Announcement (of November 1, 1929) 265, 224, 266.

Ismail, Mirza Sir, 290.

Iyengar, Srinivas, his constitution scheme 206.

Iyer, Sir C. P. Ramswami, 265.

J

James, VI of Scotland 5.

Jay, on importance of self-defence (in Federalist) 34-35, on dangers of division 41, 91.

Jinnah, M.A., 179, 187, 217-18, 272.

Johannesburg, 39-40.

Judiciary, its special position in a federation 20-21.

K

Khan, Sir Zulfiqar Ali, 273, 280-3.

L

Laski, Prof. Harold J., on the structure of social organization 26, on executive 27-28.

Lawrence Sullivan, 144.

League of Nations, as an incipient federation 8, 42-43, 66, 316, 341.

Lewis, Sir G. O., on change of language of the governed 51-52.

Lincoln, Abraham, declares war against southern states 82.

Lombard League, 34.

Lucas, Sir C. P., on racial question 48-49, 63-64.

Lycia, 4.

Lytton, Lord, on financial administration in India 157.

M

Macdonald, J. Ramsay, 178.

Madison, 91.

Magadh, 181.

Magyars, 56.

Mahdaji-Sindhia, 138.

Mahratta confederacy, 138-39, 146.

Marriot, J. A. R., on second chambers 321-22.

Marshall, Chief Justice, 116-18, 318.

Monroe Doctrine, 66.

Montagu-Chelmsford Reforms, 167.

178, Provincial Governments 165-75,

Central Government 175-78, and

depressed classes 189, and non-

Brahmans 189, 267, 285.

Montagu, E. S., Announcement (August

20, 1917), 163-64, Joint Report

165-66.

Moonje, Dr., 219.

Morley, Lord, on importance of English language 194.

Morley-Minto Reforms, 158-165, and

Muslims 185, and depressed classes

189-211.

Mughals, India under the 130-32, villages under the 137.

Muslim Demands, (in India) Lucknow

Pact 185, separate electorates and

representation 186, Punjab and

Bengal 186-87, nationalist Muslims

opposition to 187, Sind and Baluchis-

tan and N. W. F. Provinces 192,

211, 213, 217-19, 271, 290, 335

Mussolini, settles dispute with the

Vatican 58.

N

Nehru, Pandit Moti Lal, 206 246.

—Report 216, 210-11, rejects reserva-

tion of seats for majority community

213-15 figures for Bengal elections,

215, on Sind 232-33, 264, 268-270

278, 294-96, 301-2, 313, 319

Netherlands, confederacy of 35.

New Brunswick, 36.

New Guinea, 34.

New Hebrides, 34.

New South Wales, 37.

New Zealand, 32, 264.

Nizam, 138.

North West Frontier Province, 190-91,

231-45, 345-46.

O

Ontario, Province of 7

P

Parkes, Sir Henry, 37, 45.

Parliament, unrestricted powers of

- British 12, 44. See also under Indian federation.
- Partition of Bengal 192.
- Pathan Kings of India, 133-35.
- Patiala, Maharaja of 247, 273, 278.
- Peel, Lord, 256.
- Pitt's India Act, 144-45.
- Political Parties (in India) and the form of the constitution 205, 208.
- Political Unions, Types of 4-7.
- Powers Distribution of (in the Indian federation) 328-32; of the Central Indian Government; 319-320; List of subjects assigned to the Central Government in India 312-315, concurrent 317. Principles regarding the assignment of (Indian federation) 318; of provincial Governments in India 313-396.
- Prince Edward Island, 36.
- Provinces, (in India), redistribution and status of 190-92, area, population and revenue of 191, boundaries not based upon any principle 191, linguistic and cultural diversities 191, linguistic divisions of population in Madras and Bombay 196, redistribution and status of (discussions) 229-46. Sind 231-34, (solution) 294-308, N. W. F. P. and Baluchistan 298-305.
- Provincial Autonomy, 285-88, for N. W. F. P. 347.
- Punjab Pact, 216.
- Q
- Qubaicha, 133.
- Quebec, Province of, 7.
- Qutubuddin, 133.
- R
- Raghoba, 143.
- Ram Chandra, 127.
- Ranjit Singh, and N. W. F. P. 298.
- Reading, Lord, 197, 255-56.
- Regulating Act, (1773), 142-43.
- Reforms Enquiry Committee, (1924) 268, 284.
- Round Table Conference, 207-9, 224, 237, 248, 266, 273-74, 276, 290, 296, 315-16, 322, 324.
- S
- Sangram Singh, 135.
- Sapru, Sir Tej Bahadur, 206, 207, at R. T. C. 255, 272.
- Sastri, Rt. Hon'ble 179.
- Scotland, Union with England 5-6.
- Shafi, Sir Mohammad, 187.
- Shah, Prof. K. T. 157.
- Sidgwick, Henry, 71-72.
- Sikandar Lodi, 135.
- Sikhs 138, demands of 188, 222-23.
- Simon Commission Report, Adverse criticism in India 178-79 and depressed classes 189, 209, 221-22, 223-25, 233-34, 236, 255, 296, 302, 330.
- Sind Pack. 232-33.
- Sinha, Sir S. P., and the imperial conference (1918) 164.
- South Africa, 32, 39, 49-50, 53, 59, 84, 86-88, 95, 108, 113, 264, 281, 294, 344.
- Soviet Russia, 71.
- Spain, 35.
- State Governments, Powers of 85-95.
- Suggestions. (other) for Indian federation and their effects 370-382.
- Subrawardy, Dr. Abdulla, 273, 302-303.
- Supreme, Court 21 In America it enhances powers of the federal government 92, U. S. A. 114-120, in India 339-41.
- Switzerland, 31, cantons 34, 42, 49, 55, 56, religious war in 58-58, Sonderbund 69-71, 95, 110-111, 281, 319, 333, 335-36.
- T
- Taney, Chief Justice, 118.
- Taylor, 143.
- Timur, 134.
- Transvaal, 89.
- V
- Vijaynagar, Kingdom of 134.
- Virginia, and Kentucky resolutions 23.
- W
- Warren Hastings, 141, 143.
- Watson, 140.
- Webster, Daniel, on rights of national government 22-24.
- Wellesley, 146, 47, 260.
- Whyte, Sir Frederick, on the powers of provinces in the Union of South Africa, on Provincial autonomy 286.
- Wood, Sir Charles, 163.
- Y
- Young, Sir William Maworth, 284.
- Yuan Chwang, 128.
- Yudhisthir, 127.